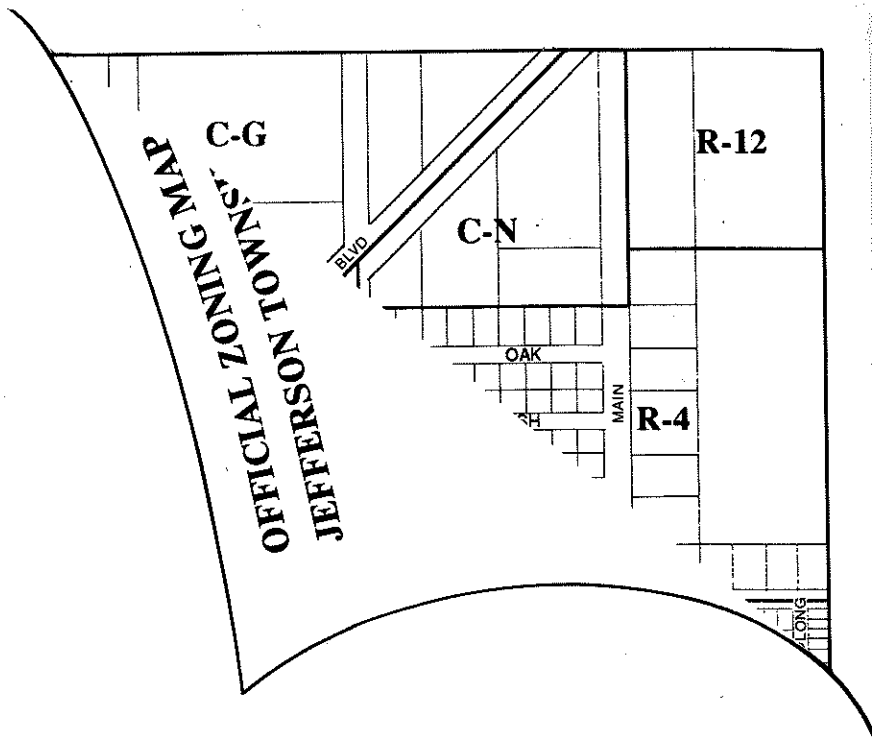

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MODEL ZONING CODE

Ohio Department of Development
1989

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Ohio Model Zoning Code

1989

Ohio Department of Development
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Special thanks to Tom Kipp, Amanda Maxwell, and Kathleen Shaw of the Development Department, Planning Division, City of Columbus, for their interest and assistance.

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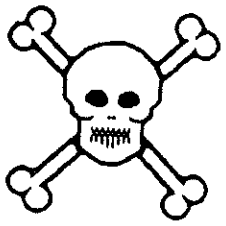
HOW TO USE THE MODEL

The Ohio Model Zoning Code is a basic but comprehensive format which local officials can adapt to fit the unique needs of each community. Because it is designed to be adapted rather than adopted, there is greater emphasis upon administration and procedure than upon specific regulatory requirements for each district. Perhaps contributor Mike Minister put it best:

> The Model Zoning Code should be viewed and used by a city or a village or a township or a county as a place to begin the consideration of zoning issues. The goals and objectives of zoning in each community are different, and so the zoning code in each community must be different.

This publication is comprised of the model code text itself presented in thirteen articles, and the appendices. Many parts of the text -- for example, those dealing with administration, enforcement, amendment, nonconformities, appeals and variances -- may be closely modeled by local governments, since they were essentially fashioned according to established practice or existing law. We have endeavored to facilitate such modeling by providing language suitable for municipalities, counties and townships.



WARNING!
XEROXING MAY
BE HAZARDOUS
TO YOUR HEALTH

But the user of the Model must be cautioned that some parts of the code are not meant to be swallowed whole. Particularly in the case of the district regulations, supplemental district regulations, and special regulations (Articles 8,9, and 10), the text is basically illustrative: sample text and examples of criteria and specific regulations are furnished so local governments can model upon the initiatives and ideas provided, not the specific details. The Commentary provided in Appendix M discusses these points, and in some places we have unmistakably directed the reader to the Commentary for clarification. For this reason the text also includes parenthetical directives to the user, such as "Indicate Districts" or "Add Others," to show that the text provided is a sample or guide to illustrate the nature and content of such a regulation, not to provide it in full. It is, after all, in such regulatory areas that the individuality of the community must surface to address its unique needs and circumstances.

We also caution charter municipalities that the charters they adopted pursuant to Section 7 of Article XVIII of the Ohio Constitution may well contain provisions contrary to the statutory regulations upon which the Model is based. The best recourse is to examine the city's charter thoroughly for such provisions with the aid of the law director, prior to the serious drafting of a zoning code.

We must further caution the user of the Model that it is not oblivious to change. The passage of a state bill, the enactment of a federal law, the decision of a high court may strike down a long-accepted practice, render obsolete a definition, or necessitate a new procedure. Any code derived from this Model must be kept current, which means the caretakers of the local code must keep themselves current.

We hope that the appendices in particular contain many features which are user-friendly, so that all of the actors playing various parts on the local zoning scene may have a better feel for their respective roles in this complex process. The contributors' essays are intended to provide some interesting perspectives on this business of zoning.

Finally, we must recognize that, although the members of the Advisory Group contributed extensive verbal and written information and recommendations affecting both the format and content of the Model Code, the final product does not reflect the thinking of any member of that group. Rather it reflects the impact of their philosophies taken as a whole upon the editor, who can only take comfort in these words:

> 'Tis with our judgments as our watches, none
> Go just alike, yet each believes his own.
>
> -- Alexander Pope, Essay on Criticism

preamble

AN ORDINANCE (RESOLUTION) OF THE CITY (VILLAGE, COUNTY, TOWNSHIP) OF _____ _____, OHIO, ENACTED IN ACCORDANCE WITH A COMPREHENSIVE PLAN AND THE PROVISIONS OF CHAPTER 713 (303, 519), OHIO REVISED CODE, DIVIDING THE CITY (VILLAGE, UNINCORPORATED PORTION OF THE COUNTY, UNINCORPORATED PORTION OF THE TOWNSHIP) INTO ZONES AND DISTRICTS, ENCOURAGING, REGULATING, AND RESTRICTING THEREIN THE LOCATION, CONSTRUCTION, RECONSTRUCTION, ALTERATION AND USE OF STRUCTURES AND LAND; PROMOTING THE ORDERLY DEVELOPMENT OR RESIDENTIAL, BUSINESS, INDUSTRIAL, RECREATIONAL, AND PUBLIC AREAS; PROVIDING FOR ADEQUATE LIGHT, AIR, AND CONVENIENCE OF ACCESS TO PROPERTY BY REGULATING THE USE OF LAND AND BUILDINGS AND THE BULK OF STRUCTURES IN RELATIONSHIP TO SURROUNDING PROPERTIES; LIMITING CONGESTION IN THE PUBLIC RIGHT-OF-WAYS; PROVIDING THE COMPATIBILITY OF DIFFERENT LAND USES AND THE MOST APPROPRIATE USE OF LAND; PROVIDING FOR THE ADMINISTRATION OF THIS ORDINANCE (RESOLUTION), DEFINING THE POWERS AND DUTIES OF THE ADMINISTRATIVE OFFICERS AS PROVIDED HEREAFTER, AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISIONS IN THIS ORDINANCE (RESOLUTION) OR ANY AMENDMENT THERETO, ALL FOR THE PURPOSE OF PROTECTING THE PUBLIC HEALTH, SAFETY, COMFORT AND GENERAL WELFARE; AND FOR THE REPEAL THEREOF.

THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY (VILLAGE) OF _____ _____, _____ COUNTY, STATE OF OHIO:

THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS (TOWNSHIP TRUSTEES) OF _____ COUNTY (TOWNSHIP, _____ COUNTY), STATE OF OHIO:

ARTICLE 1

GENERAL PROVISIONS

100 Title.

This Ordinance (Resolution) shall be known and may be cited to as the "Zoning Ordinance (Resolution) of the City (Village, County, Township) of _____," except as referred to herein, where it shall be known as "this Ordinance (Resolution)."

110 Purpose.

This Ordinance (Resolution) is enacted for the general purpose of promoting the public health, safety, comfort, and welfare of the residents of the City (Village, County, Township) of _____; to protect the property rights of all individuals by assuring the compatibility of uses and practices within districts; to facilitate the provision of public utilities and public services; to lessen congestion on public streets, roads, and highways; to provide for the administration and enforcement of this Ordinance (Resolution), including the provision of penalties for its violation; and for any other purpose provided in this Ordinance (Resolution), the Ohio Revised Code, or under common law rulings.

120 Interpretation.

In their interpretation and application, the provisions of this Ordinance (Resolution) shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and the general welfare. Whenever the requirements of this Ordinance (Resolution) conflict with the requirements of any other lawfully adopted rules, regulations, ordinances, or resolutions, the most restrictive, or that imposing the higher standards, shall govern.

130 Separability.

Should any section or provision of this Ordinance (Resolution) be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance (Resolution) as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

140 Repeal of Conflicting Ordinances (Resolutions).

All Ordinances (Resolutions) in conflict with this Zoning Ordinance (Resolution) or inconsistent with the provisions of this Ordinance (Resolution) are hereby repealed to the extent necessary to give this Ordinance (Resolution) full force and effect.

150 **Effective Date.**

This Ordinance (Resolution) shall become effective from and after the date of its approval and adoption, as provided by law.

ARTICLE 2

DEFINITIONS

Interpretation of Terms or Words: For the purpose of this Ordinance (Resolution), certain terms or words used herein shall be interpreted as follows:

1. The word "person" includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual.

2. The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.

3. The word "shall" is a mandatory requirement, the word "may" is a permissive requirement, and the word "should" is a preferred requirement.

4. The words "used" or "occupied" include the words "intended, designed, or arranged to be used or occupied."

5. The word "lot" includes the words "plot" or "parcel."

Accessory Use (or Structure): Accessory Use means a use, object, or structure constructed or installed on, above, or below the surface of a parcel, which is located on the same lot as a principal use, object, or structure, and which is subordinate to or serves the principal use, object, or structure, is subordinate in area to the principal use, object, or structure, and is customarily incidental to the principal use, object, or structure. Among other things, "Accessory Use" includes anything of a subordinate nature attached to or disattached from a principal structure or use, such as fences, walls, sheds, garages, parking places, decks, poles, poster panels, and billboards. Except as otherwise required in this Ordinance (Resolution), an accessory use shall be a permitted use.

Agriculture: The use of land for farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture, and animal and poultry husbandry and the necessary accessory uses for packing, treating, or storing the produce, provided, however that:

1. The operation of any such accessory uses shall be secondary to that of normal agricultural activities; and

2. The above uses shall not include the feeding or sheltering of animals or poultry in penned enclosures within 100 feet of any residential zoning district. Agriculture does not include the feeding of garbage to animals or the operation or maintenance of a commercial stockyard or feedyard.

Airport: Any runway, land area or other facility designed or used either publicly or privately by any person for the landing and taking-off of aircraft, including all necessary taxiways, aircraft storage and tie-down areas, hangars and other necessary buildings, and open spaces.

Alley: See **Thoroughfare**

Alterations, Structural: Any change in the supporting members of a building such as bearing walls, columns, beams, or girders.

Automotive Repair: The repair, rebuilding or reconditioning of motor vehicles or parts thereof, including collision service, painting, and steam cleaning of vehicles.

Automotive, Mobile Home, Travel Trailer, and Farm Implement Sales: The sale or rental of new and used motor vehicles, mobile homes, travel trailers, or farm implements, but not including repair work except incidental warranty repair of same, to be displayed and sold on the premises.

Automotive Wrecking: The dismantling or wrecking of used motor vehicles, mobile homes, trailers, or the storage, sale or dumping of dismantled, obsolete or wrecked vehicles or their parts.

Basement: A story all or partly underground but having at least one-half of its height below the average level of the adjoining ground. (See **Story**)

Building: Any structure designed or intended for the support, enclosure, shelter, or protection of persons, animals, chattels, or property.

Building, Accessory: A subordinate building detached from, but located on the same lot as the principal building, the use of which is incidential and accessory to that of the main building or use.

Building, Height: The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs, and the mean height between eaves and ridge for gable, hip and gambrel roofs.

Building Line: (See **Setback Line**)

Building, Principal: A building in which is conducted the main or principal use of the lot on which said building is situated.

Business, Convenience: Commercial establishments which cater to and can be located in close proximity to or within residential districts without creating undue vehicular congestion, excessive noise, or other objectionable influences. To prevent congestion, convenience uses include, but need not be limited to, drugstores, beauty salons, barber shops, carry-outs, dry cleaning and laundry pickup facilities, and grocery stores, if less than 10,000 square feet in floor area. Uses in this classification tend to serve a day-to-day need in the neighborhood.

Business General: Commercial uses which generally require locations on or near major thoroughfares and/or their intersections, and which tend, in addition to serving day-to-day needs of the community, also supply the more durable and permanent needs of the whole community. General business uses include, but need not be limited to, such activities as supermarkets; stores that sell hardware, apparel, footwear, appliances, and furniture; department stores; and discount stores.

Business Highway: Commercial uses which generally require locations on or near major thoroughfares and/or their intersections, and which tend to serve the motoring public. Highway business uses include, but need not be limited to, such activities as filling stations; truck and auto sales and service; restaurants and motels; and commercial recreation.

Business, Office Type: Quasi-commercial uses which may often be transitional between retail business and/or manufacturing, and residential uses. Office business generally accommodates such occupations as administrative, executive, professional, accounting, writing, clerical, stenographic, and drafting. Institutional offices of a charitable, philanthropic, or religious or educational nature are also included in this classification.

Business Services: Any profit making activity which renders services primarily to other commercial or industrial enterprises, or which services and repairs appliances and machines used in homes and businesses.

Business, Wholesale: Business establishments that generally sell commodities in large quantities or by the piece to retailers, jobbers, other wholesale establishments, or manufacturing establishments. These commodities are basically for further resale, for use in the fabrication of a product, or for use by a business service.

Cemetery: Land used or intended to be used for the burial of the human or animal dead and dedicated for cemetery purposes, including crematories, mausoleums, and mortuaries if operated in connection with and within the boundaries of such cemetery.

Channel: A natural or artificial watercourse of perceptible extent, with bed and banks to confine and conduct continuously or periodically flowing water.

Child Day-Care: Administering to the needs of infants, toddlers, pre-school children, and school children outside of school hours by persons other than their parents or guardians, custodians, or relatives by blood, marriage, or adoption for any part of the twenty-four hour day in a place or residence other than

the child's own home. The following are child day-care facilities:

Child Day-Care Center: Any place in which child day-care is provided, with or without compensation, for 13 or more children at any one time, or any place that is not the permanent residence of the licensee or administrator in which child day-care is provided, with or without compensation, for 7 to 12 children at any one time. In counting children for the purposes of this definition, any children under 6 years of age who are related to a licensee, administrator, or employee and who are on the premises shall be counted.

Type A Family Day-Care Home: A permanent residence of the administrator in which child day-care is provided for 4 to 12 children at any one time, if 4 or more children are under 2 years of age. In counting children for the purposes of this definition, any children under 6 years of age who are related to a licensee, administrator, or employee and who are on the premises of the Type A home shall be counted. The term "Type A family day-care home" does not include a residence in which the needs of children are administered to, if all such children are siblings of the same immediate family and the residence is their home.

Type B Family Day-Care Home: A permanent residence of the provider in which child day-care or child day-care services are provided for 1 to 6 children at one time and in which no more than 3 children may be under 2 years of age at any one time. In counting children for the purposes of this definition, any children under 6 years of age who are related to the provider and are on the premises of the Type B home shall be counted. The term "Type B family day-care home" does not include a residence in which the needs of children are administered to, if all such children are siblings of the same immediate family and the residence is their home.

Clinic: A place used for the care, diagnosis and treatment of sick, ailing, infirm, or injured persons, and those who are in need of medical and surgical attention, but who are provided with board or room or kept overnight on the premises.

Club: A building or portion thereof or premises owned or operated by a person for a social, literary, political, educational, or recreational purpose primarily for the exclusive use of members and their guests.

Commercial Entertainment Facilities: Any profit making activity which is generally related to the entertainment field, such as motion picture theaters, carnivals, nightclubs, cocktail lounges, and similar entertainment activities.

Comprehensive Development Plan: A plan, or any portion thereof, adopted by the planning commission and the legislative authority of the City (Village, County) of _____ showing the general location and extent of present and proposed physical facilities including housing, industrial and commercial uses, major thoroughfares, parks, schools, and other community facilities. This plan establishes the goals, objectives, and policies of the community.

Conditional Use: A use permitted within a district other than a principally permitted use, requiring a conditional use permit and approval of the Board of Zoning Appeals.

Conditional Use Permit: A permit issued by the Zoning Administrator upon approval by the Board of Zoning Appeals to allow a use other than a principally permitted use to be established within the district.

Condominium: A building or group of buildings in which units are individually owned but the structure, common areas and facilities are owned on a proportional, undivided basis by all of the owners.

Corner Lot: (See **Lot Types**)

Cul-de-Sac: (See **Thoroughfare**)

Dead-end Street: (See **Thoroughfare**)

Density: A unit of measurement expressing the number of dwelling units per acre of land.

1. Gross Density - the number of dwelling units per acre of the total land to be developed.

2. Net Density - the number of dwelling units per acre of land when the acreage involved includes only the land devoted to residential uses.

Density Bonus: An increase in the number of allowable dwelling units per acre granted for some specific reason, such as the provision of lower-income housing, as provided for in the zoning regulations.

District: A part, zone, or geographic area within the municipality (township, county) within which certain zoning or development regulations apply.

Dwelling: Any building or structure (except a house trailer or mobile home as defined by Ohio Revised Code 4501.01) which is wholly or partly used or intended to be used for living or sleeping by one or more human occupants.

Dwelling Unit: Space, within a dwelling, comprising living, dining, sleeping room or rooms, storage closets, as well as space and equipment for cooking, bathing, and toilet facilities, all used by only one family and its household employees.

Dwelling, Single Family: A dwelling consisting of a single dwelling unit only, separated from other dwelling units by open space.

Dwelling, Two-Family: A dwelling consisting of two dwelling units which may be either attached side by side or one above the other, and each unit having a separate or combined entrance or entrances.

Dwelling, Multi-Family: A dwelling consisting of three or more dwelling units including condominiums with varying arrangements of entrances and party walls. Multi-family housing may include public housing and industrialized units.

Dwelling, Industrialized Unit: An assembly of materials or products comprising all or part of a total structure which, when constructed, is self-sufficient or substantially self-sufficient and when installed, constitutes a dwelling unit, except for necessary preparations for its placement, and including a modular or sectional unit but not a mobile home.

Dwelling, Rooming House (Boarding House, Lodging House, Dormitory): A dwelling or part thereof, other than a hotel, motel or restaurant where meals and/or lodging are provided for compensation, for three or more unrelated persons where no cooking or dining facilities are provided in the individual rooms.

Easements: Authorization by a property owner for the use by another, and for a specified purpose, of any designated part of his property.

Elderly Household: Not more than three (3) persons, related or unrelated, who occupy a single dwelling unit, of whom one person is elderly.

Elderly Housing Facility: A building or buildings containing twelve (12) or more dwelling units where occupancy is restricted to elderly persons or households. Such facilities may include emergency first aid care, day care, therapy, personal care, nursing facilities, recreational facilities, and provide for independent or semi-independent living. For the purposes of this definition, "elderly housing facility" shall not include convalescent homes, nursing homes, group residential facilities, or homes for the aged.

Elderly Person: Any person who is 62 years of age or older, or any person under 62 years of age who is handicapped such that his physical impairments are of a long-term duration and impede his ability to live independently without a suitable housing environment.

Essential Services: The erection, construction, alteration, or maintenance, by public utilities or municipal or other governmental agencies, of underground gas, electrical, steam or water transmission, or distribution systems, collection, communication, supply or disposal systems, collection, communication, supply or disposal systems or sites, including poles, wires, mains, drains, sewers, pipes, traffic signals, hydrants, or other similar equipment and accessories in connection therewith which are reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or

for the public health or safety or general welfare, but not including buildings.

Factory-Built Housing: Factory-built Housing means a factory-built structure designed for long-term residential use, the components of which are essentially constructed or assembled prior to its delivery to and installation upon a site. For the purposes of this Ordinance (Resolution), "factory-built housing" shall include the following:

1. Manufactured Home. Any nonself-propelled vehicle transportable in one or more sections which, in the traveling mode, is 8 body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling unit with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, and which bears a label certifying that it is built in compliance with Federal Manufactured Housing Construction and Safety Standards.

2. Modular Home. Factory-built housing certified as meeting the [local or] State Building Code as applicable to modular housing. Once certified by the state, modular homes shall be subject to the same standards as site-built homes.

3. Mobile Home. A transportable, factory-built home, designed to be used as a year-round residential dwelling and built prior to enactment of the Federal Manufactured Housing Construction and Safety Standards Act of 1974, which became effective June 15, 1976. (Optional Definition: See **Mobile Home**)

Family: A person living alone, or two or more persons living together as a single housekeeping unit in a dwelling unit, as distinguished from a group occupying a rooming house, motel or hotel, dormitory, fraternity or sorority house, provided, however, that "family" shall not include more than four persons unrelated to each other by blood, marriage or legal adoption, except for Class I Type B group residential facilities.

Farm Vacation Enterprises (Profit or Non-Profit): Farms adapted for use as vacation farms, picnicking and sport areas, fishing waters, camping, scenery, and nature recreation areas; hunting areas; hunting preserves and watershed projects.

Feedlot: A relatively small, confined land area for fattening or temporarily holding catter for shipment.

Flood Plain: That land, including the flood fringe and the floodway, subject to inundation by the regional flood.

Flood, Regional: Large floods which have previously occurred or which may be expected to occur on a particular stream because of like physical characteristics. The regional flood generally has an average frequency of the one hundred (100) year recurrence interval flood.

Floodway: That portion of the flood plain, including the channel, which is reasonable required to convey the regional flood waters. Floods of less frequent recurrence are usually contained completely within the floodway.

Floodway Fringe: That portion of the flood plain, excluding the floodway, where development may be allowed under certain restrictions.

Floor Area of a Residential Building: The sum of the gross horizontal area of the several floors of a residential building, excluding basement floor areas not devoted to residential use, but including the area of roofed porches and roofed terraces. All dimensions shall be measured between interior faces of walls.

Floor Area of a Non-Residential Building (To be Used in Calculating Parking Requirements): The floor area of the specified use excluding stairs, washrooms, elevator shafts, maintenance shafts and rooms, storage spaces, display windows, and fitting rooms, and similar areas.

Floor Area, Usable: Measurement of usable floor area shall be the sum of the horizontal areas of the several floors of the building, measured from the interior faces of the exterior walls.

Flood Processing: The preparation, storage, or processing of food products. Examples of these activities include bakeries, dairies, canneries, and other similar businesses.

Garages, Private: A detached accessory building or portion of a principal building for the parking or temporary storage of automobiles, travel trailers and/or boats of the occupants of the premises and wherein:

1. Not more than one space is rented for parking to person not resident on the premises;

2. No more than one commercial vehicle per dwelling unit is parked or stored;

3. The commercial vehicle permitted does not exceed two tons capacity.

Garage, Public: A principal or accessory building other than a private garage, used for parking or temporary storage of passenger automobiles, and in which no service shall be provided for remuneration.

Garage, Service Station: Buildings and premises where gasoline, oil, grease, batteries, tires, and motor vehicle accessories may be supplied and dispensed at retail, and where in addition, the following services may be rendered and sales made:

1. Sales and service of spark plugs, batteries, and distributors parts;

2. Tire servicing and repair, but not recapping or regrooving;

3. Replacement of mufflers and tail pipes, water hose, fan belts, brake fluid, light bulbs, fuses, floor mats, seat covers, windshield wipers and blades, grease containers, wheel bearings, mirrors, and the like;

4. Radiator cleaning and flushing;

5. Radiator welding and repair;

6. Greasing and lubrication;

7. Providing and repairing fuel pumps, oil pumps, and lines;

8. Minor servicing and repair of carburetors;

9. Adjusting and repairing brakes;

10. Minor motor adjustment not involving removal of the head or crankcase or racing the motor;

11. Sales of cold drinks, packaged food, tobacco, and similar convenience goods for service station customers, as accessory and incidental to principle operations;

12. Provisions of road maps and other informational material to customers, provision of restroom facilities;

13. Warranty maintenance and safety inspections.

Uses permissible at a filling station do not include major mechanical and body work, straighting of body parts, painting, welding, storage of automobiles not in operation condition, or other work involving noise, glare, fumes, smoke, or other characteristics to an extent greater than normally found in filling stations. A filling station is not a repair garage nor a body shop.

Group Residential Facility: A group residential facility is a community residential facility, licensed and/or approved and regulated by the State of Ohio, which provides rehabilitative or habilitative services. There are two classes of group residential facilities:

Class I: Any state, federal, or locally approved dwelling or place used as a foster home for children or adults (not including nursing homes) or as a home for the care or rehabilitation of dependent or predelinquent children, for the physically handicapped or disabled, or for those with mental illness or developmental disabilities. A Class I Type A group residential facility contains six (6) or more residents, exclusive of staff. A Class I Type B group residential facility contains

five (5) or less residents, exclusive of staff.

Class II: Any state, federal, or locally approved dwelling or place used as a home for juvenile offenders; a halfway house providing residential care or rehabilitation for adult offenders in lieu of institutional sentencing; a halfway house providing residence for persons leaving correctional institutions; and residential rehabilitation centers for alcohol and drug abusers, provided that detoxification is expressly prohibited on such premises. A Class II Type A group residential facility contains six (6) or more residents, exclusive of staff. A Class II Type B group residential facility contains five (5) or less residents, exclusive of staff.

Historic Area: A district or zone designated by a local authority, state or federal government within which the buildings, structures, appurtenances and places are of basic and vital importance because of their association with history, or because of their unique architectural style and scale, including materials, proportion, form and architectural detail, or because of their being a part of or related to a square, park, or area the design or general arrangement of which should be preserved and/or developed according to a fixed plan based on cultural, historical or architectural motives or purposes.

Home Occupation: Home Occupation means an accessory use which is an activity, profession, occupation, service, craft, or revenue-enhancing hobby which is clearly incidental and subordinate to the use of the premises as a dwelling, and is conducted entirely within the dwelling unit, or elsewhere on the premises by conditional use permit, without any significant adverse effect upon the surrounding neighborhood. Activities such as teaching, tutoring, babysitting, tax consulting and the like shall involve not more than three receivers of such services at any one time.

Hotel or Motel and Apartment Hotel: A building in which lodging or boarding and lodging are provided and offered to the public for compensation. As such it is open to the public in contradistinction to a boarding house, rooming house, lodging house, or dormitory which is herein separately defined.

Institution: Building and/or land designed to aid individuals in need of mental, therapeutic, rehabilitative counseling, or other correctional services.

Junk Buildings, Junk Shops, Junk Yards: Any land, property, structure, building, or combination of the same, on which junk is stored or processed.

Kennel: Any lot or premises on which four (4) or more domesticated animals more than four (4) months of age are housed, groomed, bred, boarded, trained, or sold and which offers provisions for minor medical treatment.

Loading Space, Off-Street: Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street parking space in computation of required off-street parking space. All off-street loading spaces shall be located totally outside of any street or alley right-of-way.

Location Map: (See **Vicinity Map**)

Lot: For the purposes of this ordinance (resolution), a lot is a parcel of land of sufficient size to meet minimum zoning requirements for use, coverage, and area, and to provide such yards and other open spaces as are herein required. Such lot shall have frontage on an improved public street, or on an approved private street, and may consist of:

1. A single lot of record;

2. A portion of a lot of record;

3. A combination of complete lots of record, of complete lots of record and portions of lots of record, or of portions of lots of record.

Lot Coverage: The ratio of enclosed ground floor area of all buildings on a lot to the horizontally projected area of the lot, expressed as a percentage.

Lot Frontage: The front of a lot shall be construed to be the portion nearest the street. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated under "Yards" in this section.

Lot, Minimum Area of: The area of a lot is computed exclusive of any portion of the right-of-way of any public or private street.

Lot Measurements: A lot shall be measured as follows:

1. Depth: The distance between the mid-points of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.

2. Width: The distance between straight lines connecting front and rear lot lines at each side of the lot, measured at the building setback line.

Lot of Record: A lot which is part of a subdivision recorded in the office of the County Recorder, or a lot of parcel described by metes and bounds, the description of which has been so recorded.

Lot Types: Terminology used in this ordinance (resolution) with reference to corner lots, interior lots and through lots is as follows:

1. Corner Lot: A lot located at the intersection of two or more streets. A lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than one hundred thirty five (135) degrees.

2. Interior Lot: A lot with only one frontage on a street.

3. Through Lot: A lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as double frontage lots.

4. Reversed Frontage Lot: A lot on which frontage is at right angles to the general pattern in the area. A reversed frontage lot may also be a corner lot.

Major Thoroughfare Plan: The portion of comprehensive plan adopted by the City (Village, County, Regional) Planning Commission indicating the general location recommended for arterial, collector, and local thoroughfares within the appropriate jurisdiction.

Maintenance and Storage Facilities: Land, buildings, and structures devoted primarily to the maintenance and storage of construction equipment and material.

Manufactured Home Park: Any lot upon which two or more manufactured homes are located for residential use, either free of charge or for revenue purposes, including any roadway, building, structure, vehicle, or enclosure used or intended to be used as a part of the facilities of such park.

Manufacturing, Heavy: Manufacturing, processing, assembling, storing, testing, and similar industrial uses which are generally major operations and extensive in character; require large sites, open storage and service areas, extensive services and facilities, ready access to regional transportation; and normally generate some nuisances such as smoke, noise, vibration, dust, glare, air pollution, and water pollution, but not beyond the district boundary.

Manufacturing, Light: Manufacturing or other industrial uses which are usually controlled operations; relatively clean, quiet, and free of objectionable or hazardous elements such as smoke, noise, odor, or dust; operating and storing within enclosed structures; and generating little industrial traffic and no nuisances.

Manufacturing, Extractive: Any mining, quarrying, excavating processing, storing, separating, cleaning, or marketing of any mineral natural resource.

Mobile Home: Any non-selfpropelled vehicle so designed, constructed, reconstructed, or added to by means of accessories in such manner as will permit the use and occupancy thereof for

human habitation, when connected to utilities, whether resting on wheels, jacks, blocks, or other temporary foundation and used or so construed as to permit its being used as a conveyance upon the public streets and highways and exceeding a gross weight of four thousand five hundred (4,500) pounds and an overall length of thirty (30) feet, and not in compliance with the Federal Manufactured Housing Construction and Safety Standards Act of 1974.

Mobile Home Park: Any site, or tract of land under single ownership, upon which three or more mobile homes used for habitation are parked, either free of charge or for revenue purposes; including any roadway, building, structure, vehicle, or enclosure used or intended for use as a part of the facilities of such park.

Nonconformities: Lots, uses of land, structures, and uses of structures and land in combination lawfully existing at the time of enactment of this Ordinance (Resolution) or its amendments which do not conform to the regulations of the district or zone in which they are situated, and are therefore incompatible.

Nursery, Nursing Home: A home or facility for the care and treatment of babies, children, pensioners, or elderly people.

Nursery, Plant Materials: Land, building, structure, or combination thereof for the storage, cultivation, transplanting of live trees, shrubs, or plants offered for retail sale on the premises including products used for gardening or landscaping.

Open Spaces: An area substantially open to the sky which may be on the same lot with a building. The area may include, along with the natural environmental features, water areas, swimming pools, and tennis courts, any other recreational facilities that the planning (zoning) commission deems permissive. Streets, parking areas, structures for habitation, and the like shall not be included.

Overlay District: A district described by the zoning map within which, through super-imposition of a special designation, furthermore regulations and requirements apply in addition to those of the underlying districts to which such designation is added.

Parking Space, Off-Street: For the purpose of this ordinance (resolution), an off-street parking space shall consist of an area adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room, but shall be located totally outside of any street or alley right-of-way.

Performance Bond or Surety Bond: An agreement by a subdivider or developer with the City (Village, County) for the amount of the estimated construction cost guaranteeing the completion of physical improvements according to plans and specifications within the time prescribed by the subdivider's agreement.

Personal Services: Any enterprise conducted for gain which primarily offers services to the general public such as shoe repair, watch repair, barber shops, beauty parlors, and similar activities.

Planned Unit Development: An area of land in which a variety of housing types and subordinates commercial and industrial facilities are accommodated in a pre-planned environment under more flexible standards, such as lot sizes and setbacks, than those restrictions that would normally apply under these regulations. The procedure for approval of such development contains requirements in addition to those of the standard subdivision, such as building design principles, and landscaping plans.

Professional Activities: The use of offices and related spaces for such professional services as are provided by medical practitioners, lawyers, architects, and engineers, and similar professions.

Public Service Facility: The erection, construction, alteration, operation, or maintenance of buildings, power plants, or substations, water treatment plants or pumping stations, sewage disposal or pumping plants and other similar public service structures by a public utility, by a railroad, whether publicly or privately owned, or by a municipal or other governmental agency, including the furnishing of electrical, gas, rail transport,

communication, public water and sewage services.

Public Uses: Public parks, schools, administrative and cultural buildings and structures, not including public land or buildings devoted solely to the storage and maintenance of equipment and materials and public service facilities.

Public Way: An alley, avenue, boulevard, bridge, channel, ditch, easement, expressway, freeway, highway, land, parkway right-of-way, road, sidewalk, street, subway, tunnel viaduct, walk, bicycle path; or other ways in which the general public or a public entity have a right, or which are dedicated, whether improved or not.

Quasipublic Use: Churches, sunday schools, parochial schools, colleges, hospitals, and other facilities of an educational, religious, charitable, philanthropic, or non-profit nature.

Recreation Camp: An area of land on which two or more travel trailers, campers, tents or other similar temporary recreational structures are regularly accommodated with or without charge, including any building, structure or fixture of equipment that is used or intended to be used in connection with providing such accommodations.

Recreation Facilities: Public or private facilities that may be classified as either "extensive" or "intensive" depending upon the scope of services offered and the extent of use. Extensive facilities generally require and utilize considerable areas of land and include, but need not be limited to hunting, fishing, and riding clubs and parks. Intensive facilities generally require less land (used more intensively) and include, but need not be limited to, miniature golf courses, amusement parks, stadiums, and bowling alleys.

Research Activities: Research, development, and testing related to such fields as chemical, pharmaceutical, medical, electrical, transportation, and engineering. All research, testing, and development shall be carried on within entirely enclosed buildings, and no noise, smoke, glare, vibration, or odor shall be detected outside of said building.

Roadside Stand: A temporary structure designed or used for the display or sale of agricultural and related products.

Right-of-way: A strip of land taken or dedicated for use as a public way. In addition to the roadway, it normally incorporates the curbs, lawn strips, sidewalks, lighting, and drainage facilities, and may include special features (required by the topography or treatment) such as grade separation, landscaped areas, viaducts, and bridges.

Satellite Signal Receiver: "Dish-type Satellite Signal-Receiving Antennas", "earth stations" or "ground stations," whether functioning as part of a basic service system, direct broadcast satellite system, or multipoint distribution service system, shall mean one, or a combination of two or more of the following:

(a) A signal-receiving device such as a dish antenna whose purpose is to receive communications or signals from earth-orbiting satellites or similar sources.

(b) A low-noise amplifier (LNA) whose purpose is to boost, magnify, store, transfer or transmit signals.

(c) A coaxial cable whose purpose is to convey or transmit signals to a receiver.

Seat: For purposes of determining the number of off-street parking spaces for certain uses, the number of seats is the number of seating units installed or indicated, or each twenty-four (24) lineal inches of benches, pews, or space for loose chairs.

Setback Line: A line established by the zoning ordinance (resolution), generally parallel with and measured from the lot line, defining the limits of a yard in which no building, other than accessory building, or structure may be located above ground, except as may be provided in said code. (See **Yard**)

Sewers, Central or Group: An approved sewage disposal system which provides a collection network and disposal system and central sewage treatment facility for a single development, community, or region.

Sewers, On-Site: A septic tank or similar installation on an individual lot which utilizes an aerobic bacteriological process or equally satisfactory process for the elimination of sewage and provides for the proper and safe disposal of the effluent, subject to the approval of health and sanitation officials having jurisdiction.

Sidewalk: That portion of the road right-of-way outside the roadway, which is improved for the use of pedestrian traffic.

Sign: Any visual communication display, object, device, graphic, structure, or part, situated indoors or outdoors, or attached to, painted on, or displayed from a building or structure, in order to direct or attract attention to, or to announce or promote, an object, person, service, product, event, location, organization or the like, by means of letters, words, designs, colors, symbols, fixtures, images or illuminations.

1. Sign, On-Premises: Any sign related to a business or profession conducted, or a commodity or service sold or offered upon the premises where such sign is located.

2. Sign, Off-Premises: Any sign unrelated to a business or profession conducted, or to a commodity or service sold or offered upon the premises where such sign is offered.

3. Sign, Illuminated: Any sign illuminated by electricity, gas, or other artificial light including reflecting or phosphorescent light.

4. Sign, Lighting Device: Any light; string of lights, or group of lights located or arranged so as to cast illumination on a sign.

5. Sign, Projecting: Any sign which projects from the exterior of a building.

Special District: A zoning district created to meet the needs of an area experiencing unusual problems, or one that is designed to meet special needs.

Story: That part of a building between the surface of a floor and the ceiling immediately above. (See **Basement**)

Structure: Anything constructed or erected, the use of which requires location on the ground, or attachment to something having a fixed location on the ground. Among other things, structures include buildings, mobile homes, walls, fences and billboards.

Subdivision: The division of a lot, tract, or parcel into two or more lots, tracts, or parcels or other divisions of land for sale, development, or lease.

Supply Yards: A commercial establishment storing and offering for sale building supplies, steel supplies, coal, heavy equipment, feed and grain, and similar goods.

Swimming Pool: A pool, pond, lake, or open tank containing at least 1.5 feet of water at any point and maintained by the owner or manager.

1. Private: Exclusively used without paying an additional charge for admission by the residents and guests of a single household, a multifamily development, or a community, the members and guests of a club, or the patrons of a motel or hotel; an accessory use.

2. Community: Operated with a charge for admission; a primary use.

Thoroughfare, Street, or Road: The full width between property line bounding every public way of whatever nature, with a part thereof to be used for vehicular traffic and designated as follows:

1. Alley: A minor street used primarily for vehicular service access to the back or side of properties abutting on another street.

2. Arterial Street: A general term denoting a highway primarily for through traffic, carrying heavy loads and large volume of traffic, usually on a continuous route.

3. Collector Street: A thoroughfare, whether within a residential, industrial, commercial, or other type of development, which primarily carries traffic from local streets to arterial streets, including the principal entrance and circulation routes within residential subdivisions.

4. Cul-de-Sac: A local street of relatively short length with one end open to traffic and the other end terminating in a vehicular turnaround.

5. Dead-end Street: A street temporarily having only one (1) outlet for vehicular traffic and intended to be extended or continued in the future.

6. Local Street: A street primarily for providing access to residential or other abutting property.

7. Loop Street: A type of local street, each end of which terminates at an intersection with the same arterial or collector street, and whose principal radius points of the one hundred and eighty (180) degree system of turns are not more than one thousand (1000) feet from said arterial or collector street, nor normally more than six hundred (600) feet from each other.

8. Marginal Access Street: A local or collector street, parallel and adjacent to an arterial or collector street, providing access to abutting properties and protection from arterial orcollector streets. (Also called **Frontage Street**.)

Through Lot: (See **Lot Types**)

Transportation, Director of: The Director of the Ohio Department of Transporation.

Use: the specific purposes for which land or a building is designated, arranged, intended, or for which it is or may be occupied or maintained.

Variance: A variance is a modification of the strict terms of the relevant regulations where such modification will not be contrary to the public interest and where owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of the regulations would result in unnecessary and undue hardship.

Veterinary Animal Hospital or Clinic: A place used for the care, grooming, diagnosis, and treatment of sick, ailing, infirm, or injured animals, and those who are in need of medical or surgical attention, and may include overnight accommodations on the premises for the treatment, observation and/or recuperation. It may also include boarding that is incidental to the primary activity.

Vicinity Map: A drawing located on the plat which sets forth by dimensions or other means, the relationship of the proposed subdivision or use to other nearby developments or landmarks and community facilities and services within the general area in order to better locate and orient the area in question.

Walkway: A public way, four (4) feet or more in width, for pedestrian use only, whether along the side of a road or not.

Yard: A required open space other than a court unoccupied and unobstructed by any structure or portion of a structure from three (3) feet above the general ground level of the graded lot upward; provided, accessories, ornaments, and furniture may be permitted in any yard, subject to height limitations and requirements limiting obstruction of visibility.

1. Yard, Front: A yard extending between side lot lines across the front of a lot and from the front lot line to the front of the principal building.

2. Yard, Rear: A yard extending between side lot lines across the rear of a lot and from the front lot line to the front of the principal building.

3. Yard, Side: A yard extending from the principal building to the side lot line on both sides of the principal building between the lines establishing the front and rear yards.

Zero Lot Line Development: An arrangement of housing on adjoining lots in which the required side yard is reduced on one side and increased on the other so that the sum of the offsets on any lot is no less than the sum of the required offsets. No building or structure shall be closer to a lot line than 5 feet unless it abuts the lot line and is provided with an access easement of 5 feet on the adjoining lot or abuts a building or structure on the adjoining lot. The offset adjacent to property not included in the zero lot line development or a street shall not be less than that required in the zoning district.

Zoning Administrator: The Zoning Administrator is the person designated by the Mayor (Board of Township Trustees, Board of County Commissioners) to administer and enforce zoning regulations and related Ordinances (Resolutions). This person may also be known as the Zoning Inspector.

Zoning Permit: A document issued by the zoning inspector authorizing the use of lots, structures, uses of land and structures, and the characteristics of the uses.

ARTICLE 3

NONCONFORMITIES

300 Purpose.

Within the districts established by this Ordinance (Resolution), or by amendments thereto which may later be adopted, lots, uses of land, structures, and uses of structures and land in combination exist which were lawful before this Ordinance (Resolution) was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance (Resolution). The legitimate interest of those who lawfully established these nonconformities are herein recognized by providing for their continuance, subject to regulations limiting their completion, restoration, reconstruction, extension, and substitution. Furthermore, nothing contained in this Ordinance (Resolution) shall be construed to require any change in the layout, plans, construction, size or use of any lot, structure, or structure and land in combination, for which a zoning permit became effective prior to the effective date of this Ordinance (Resolution), or any amendment thereto. Nevertheless, while it is the intent of this Ordinance (Resolution) that such nonconformities be allowed to continue until removed, they should not be encouraged to survive. Therefore, no nonconformity may be moved, extended, altered, expanded, or used as grounds for any other use(s) or structure(s) prohibited elsewhere in the district without the approval of the Board of Zoning Appeals, except as otherwise specifically provided for in this Ordinance (Resolution).

301 Uses Under Conditional Use Provisions Not Non-Conforming Uses.

Any use which is permitted as a conditional use in a district under the terms of this ordinance (resolution) shall not be deemed a non-conforming use in such district, but shall without further action be considered a conforming use.

302 Incompatibility of Nonconformities.

Nonconformities are declared by this Ordinance (Resolution) to be incompatible with permitted uses in the districts in which such uses are located. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended or enlarged after passage of this Ordinance (Resolution) by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be generally prohibited in the district in which such use is located.

310 **Avoidance of Undue Hardship.**

To avoid undue hardship, nothing in this ordinance (resolution) shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance (Resolution) and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that the work shall be carried out diligently.

320 **Certificates For Nonconforming Uses.**

The Zoning Administrator may upon his own initiative, or shall upon the request of any owner, issue a certificate for any lot, structure, use of land, use of structure, or use of land and structure in combination, that certifies that the lot, structure or use is a valid nonconforming use. The certificate shall specify the reason why the use is a nonconforming use, including a description of the extent and kind of use made of the property in question, the portion of the structure or land used for the nonconforming use, and the extent that dimensional requirements are nonconforming. The purpose of this section is to protect the owners of lands or structures that are or become nonconforming. No fee shall be charged for such a certificate. One copy of the certificate shall be returned to the owner and one copy shall be retained by the Zoning Administrator, who shall maintain as a public record a file of all such certificates.

330 **Substitution of Nonconforming Uses.**

So long as no structural alterations are made, except as required by enforcement of other codes or ordinances (resolutions), any nonconforming use may, upon appeal to and approval by the Board of Zoning Appeals, be changed to another nonconforming use of the same classification or of a less intensive classification, or the Board shall find that the use proposed for substitution is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board may require that additional conditions and safeguards be met, which requirements shall pertain as stipulated conditions to the approval of such change, and failure to meet such conditions shall be considered a punishable violation of this Ordinance (Resolution). Whenever a nonconforming use has been changed to a less intensive use or becomes a conforming use, such use shall not thereafter be changed to a more intensive use.

340 **Single Non-Conforming Lots of Record.**

In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this Ordinance (Resolution), notwithstanding limitations imposed by other provisions of this Ordinance (Resolution). Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located. Variances of requirements listed in Articles 9 of this Ordinance (Resolution) other than lot area or lot width shall be obtained only through action of the Board of Zoning Appeals as provided in Sections 400 through 418.

341 **Non-Conforming Lots of Record in Combination.**

If two or more lots or a combination of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance (Resolution), and if all or part of the lots with no buildings do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this Ordinance (Resolution), and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this Ordinance (Resolution), nor shall any division of any parcel be made which creates a lot with a width or area below the requirements stated in this Ordinance (Resolution).

350 **Non-Conforming Uses of Land.**

Where, at the time of adoption of this Ordinance (Resolution), lawful uses of land exist which would not be permitted by the regulations imposed by this Ordinance (Resolution), the uses may be continued so long as they remain otherwise lawful, provided:

1. No such nonconforming uses shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance (Resolution);

2. No such nonconforming uses shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such uses at the effective date of adoption or amendment of this Ordinance (Resolution);

3. If any such nonconforming uses of land are discontinued or abandoned for more than two (2) years (except when government action impedes access to the premises), any subsequent use of such land shall conform to the regulations specified by this Ordinance (Resolution) for the district in which such land is located;

4. No additional structure not conforming to the requirements of this Ordinance (Resolution) shall be erected in connection with such non-conforming use of land.

360 **NonConforming Structures.**

Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance (Resolution) that could not be built under the terms of this Ordinance (Resolution) by reason of restrictions on area, lot coverage, height, yards, its location on the lot, bulk, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity;

2. Should such nonconforming structure or nonconforming portion of a structure be destroyed by any means, it shall not be reconstructed except in conformity with the provisions of this Ordinance (Resolution);

3. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

370 **NonConforming Uses of Structures or of Structures and Land in Combination.**

If a lawful use involving individual structures, or of a structure and land in combination, exists at the effective date of adoption or amendment of this Ordinance (Resolution) that would not be allowed in the district under the terms of this Ordinance (Resolution), the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No existing structure devoted to a use not permitted by this Ordinance (Resolution) in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;

2. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this Ordinance (Resolution), but no such use shall be extended to occupy any land outside such building;

3. If no structural alterations are made, any nonconforming use of a structure or structure and land in combination, may, upon appeal to the Board of Zoning Appeals, be changed to another nonconforming use provided that the Board of Zoning Appeals shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the Board of Zoning Appeals may require appropriate conditions and safeguards in accord with other provisions of this Ordinance (Resolution);

4. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed;

5. When a nonconforming use of a structure, or structure and land in combination, is discontinued or abandoned for more than two (2) years (except when government action impedes access to the premises), the structure, or structure and land in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located;

6. Where nonconforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

380 TERMINATION OF NONCONFORMING USES.

381 Termination of Use Through Discontinuance.

When any nonconforming use is discontinued or abandoned for more than two (2) years, any new use shall not thereafter be used except in conformity with the regulations of the district in which it is located, and the nonconforming use may not thereafter be resumed. The intent to continue a nonconforming use shall not be evidence of its continuance.

382 Termination of Use by Damage or Destruction.

In the event that any nonconforming building or structure is destroyed by any means to the extent of more than fifty (50) percent of the cost of replacement of such structure, exclusive of foundation, it shall not be rebuilt, restored, or reoccupied for any use unless it conforms to all regulations of this Ordinance (Resolution). When such a nonconforming structure is damaged or destroyed to the extent of fifty (50) percent or less of the replacement cost, no repairs or rebuilding shall be permitted except in conformity with all applicable regulations of this Ordinance (Resolution) and the following conditions:

1. A Zoning Certificate pertaining to such restoration shall be applied for and issued within one (1) year of such destruction, and rebuilding shall be diligently pursued to completion.

2. Such restoration shall not cause a new nonconformity, nor shall it increase the degree of nonconformance or noncompliance existing prior to such damage or destruction.

390 **Repairs and Maintenance.**

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that the cubic content existing when it became nonconforming shall not be increased. Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official. Where appropriate, a building permit for such activities shall be required.

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ARTICLE 4

PROCEDURES AND REQUIREMENTS FOR APPEALS AND VARIANCES

400 **General.**

Appeals and variances shall conform to the procedures and requirements of Sections 401 to 418 inclusive, of this Ordinance (Resolution). As specified in Section 1332, the Board of Zoning Appeals has appellate jurisdiction relative to appeals and variances.

401 **Appeals.**

Appeals to the Board of Zoning Appeals concerning interpretation or administration of this Ordinance (Resolution) may be taken by any person aggrieved or by any officer or bureau of the legislative authority of the City (Village, County, Township) affected by any decision of the Zoning Administrator. Such appeal shall be taken within twenty (20) days after the decision by filing, with the Zoning Administrator and with the Board of Zoning Appeals, a notice of appeal specifying the grounds upon which the appeal is being taken. The Zoning Administrator shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken.

402 **Stay of Proceedings.**

An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator from whom the appeal is taken certifies to the Board of Zoning Appeals after the notice of appeal is filed with him, that by reason of facts stated in the application, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Zoning Appeals or by a court of record on application, on notice to the Zoning Administrator from whom the appeal is taken on due cause shown.

410 **Variances.**

The Board of Zoning Appeals may authorize upon appeal in specific cases such variance from the terms of this Ordinance (Resolution) as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance (Resolution) would result in unnecessary hardship. No nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for issuance of a variance. Variances shall not be granted on the grounds of convenience or profit, but only where strict application of the provisions of this Ordinance (Resolution) would result in unnecessary hardship.

411 **Application and Standards For Variances.**

Except as otherwise permitted in this Ordinance (Resolution), no variance in the strict application of the provisions of this Ordinance (Resolution) shall be granted by the Board of Zoning Appeals unless the Board shall find that the written application for the requested variance contains all of the following requirements:

1. Name, address, and phone number of applicant(s);

2. Legal description of property;

3. Description or nature of variance requested;

4. A fee as established by ordinance (resolution);

5. Narrative statements establishing and substantiating that the variance conforms to the following standards:

   a. The granting of the variance shall be in accord with the general purpose and intent of the regulations imposed by this Ordinance (Resolution) on the district in which it is located, and shall not be injurious to the area or otherwise detrimental to the public welfare.

   b. The granting of the variance will not permit the establishment of any use which is not otherwise permitted in the district.

   c. There must exist special circumstances or conditions, fully described in the findings, applicable to the land or buildings for which the variance is sought, which are peculiar to such land or buildings and do not apply generally to land or buildings in the area, and which are such that the strict application of the provisions of this Ordinance (Resolution) would deprive the applicant of the reasonable use of such land or building. Mere loss in value shall not justify a variance; there must be deprivation of beneficial use of land.

   d. There must be proof of hardship created by the strict application of this Ordinance (Resolution). It is not sufficient proof of hardship to show that greater profit would result if the variance were granted. Furthermore, the hardship complained of cannot be self-created; nor can it be established on this basis by one who purchases with or without knowledge of the restrictions; it must result from the application of this Ordinance (Resolution); it must be suffered directly by the property in question; and evidence of variances granted under similar circumstances need not be considered.

   e. The granting of the variance is necessary for the reasonable use of the land or building, and the variance as granted is the minimum variance that will accomplish this purpose.

f. The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values of the adjacent area.

g. The granting of the variance requested will not confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

412 **Additional Conditions and Safeguards.**

The Board may further prescribe any conditions and safeguards that it deems necessary to insure that the objectives of the regulations or provisions to which the variance applies will be met. Any violation of such conditions and safeguards, when they have been made a part of the terms under which the variance has been granted, shall be deemed a punishable violation under this Ordinance (Resolution).

413 **Public Hearing by the Board of Zoning Appeals.**

The Board of Zoning Appeals shall hold a public hearing within thirty (30) days after the receipt of an application for an appeal or variance from the Zoning Administrator or an applicant.

414 **Notice of Public Hearing in Newspaper.**

Before conducting the public hearing required in Section 413, notice of such hearing shall be given in one or more newspapers of general circulation in the City (Village, County, Township) at least ten (10) days before the date of said hearing. The notice shall set forth the time and place of the public hearing, and the nature of the proposed appeal or variance.

415 **Notice to Parties in Interest.**

Before conducting the public hearing required in Section 413, written notice of such hearing shall be mailed by the Chairman of the Board of Zoning Appeals, by first class mail, at least ten (10) days before the day of the hearing to all parties in interest. The notice shall contain the same information as required of notices published in newspapers as specified in Section 414.

416 **Action by Board of Zoning Appeals.**

Within thirty (30) days after the public hearing required in Section 413, the Board of Zoning Appeals shall either approve, approve with supplementary conditions as specified in Section 412, or disapprove the request for appeal or variance. The Board of Zoning Appeals shall further make a

finding in writing that the reasons set forth in the application justify the granting of the variance that will make possible a reasonable use of the land, building or structure. Appeals from Board decision shall be made in the manner specified in Section 1340.

417 **Term of Variance.**

No order of the Zoning Board of Appeals granting a variance shall be valid for a period longer than twelve (12) months from the date of such order unless the building permit or zoning approval is obtained within such period, and the erection or alteration of a building is started or the use is commenced within such period.

418 **Authorized Variances.**

Variances from the regulations of this Ordinance (Resolution) shall not be granted unless the Board makes specific findings of fact, based directly on the particular evidence presented to it, which support conclusions that the standards and conditions imposed in Section 411, and Section 412 if applicable, have been met by the applicant. Variances may be granted as guided by the following:

- To permit any yard or setback less than the yard or setback required by the applicable regulations.
- To permit the use of a lot or lots for a use otherwise prohibited solely because of the insufficient area or width of the lot or lots, but generally the respective area and width of the lot or lots should not be less than eighty (80) percent of the required area and width.
- To permit the same off-street parking facility to qualify as required facilities for two or more uses, provided that substantial use of such facility by each user does not take place at approximately the same hours of the same days of the week.
- To reduce the applicable off-street parking or loading facilities required, but generally by not more than thirty (30) percent of the required facilities.
- To allow for the deferment of required parking facilities for a reasonable period of time, such period of time to be specified in the variance.
- To increase the maximum distance that required parking spaces are permitted to be located from the use served, but generally not more than forty (40) percent.
- To increase the maximum allowable size or area of signs on a lot, but generally by not more than twenty-five (25) percent.
- To increase the maximum gross floor area of any use so limited by the applicable regulations, but generally not more than twenty-five (25) percent.

ARTICLE 5

PROCEDURES AND REQUIREMENTS FOR CONDITIONAL USE PERMITS; SUBSTANTIALLY SIMILAR USES; ACCESSORY USES

500 REGULATION OF CONDITIONAL USES

The provisions of Sections 500 to 552 inclusive of this Ordinance (Resolution) apply to the location and maintenance of any and all conditional uses.

501 Purpose.

In recent years, the characteristics and impacts of an ever-increasing number of new and unique uses, together with the broadening of numerous conventional uses, have fostered the development of more flexible regulations designed to accommodate these activities in a reasonable and equitable manner, while safeguarding both the property rights of all individuals and the health, safety, and general welfare of the community. Toward these ends, it is recognized that this Ordinance (Resolution) should provide for more detailed evaluation of each use conditionally permissible in a specific district with respect to such considerations as location, design, size, method(s) of operation, intensity of use, public facilities requirements, and traffic generation. Accordingly, conditional use permits shall conform to the procedures and requirements of Sections 510 to 552 of this Ordinance (Resolution).

510 Contents of Conditional Use Permit Application.

Any owner, or agent thereof, of property for which a conditional use is proposed shall make an application for a conditional use permit by filing it with the Zoning Administrator, who shall within seven days transmit it to the Board of Zoning Appeals. Such application at a minimum shall contain the following information:

1. Name, address and phone number of the applicant;
2. Legal description of the property;
3. Zoning district;
4. Description of existing use;
5. Description of proposed conditional use;
6. A plan of the proposed site for the conditional use showing the location of all buildings, parking and loading areas, streets and traffic accesses, open spaces, refuse and service areas, utilities, signs, yards, landscaping features, and such other information as the Board may require;
7. A narrative statement discussing the compatibility of the proposed use with the existing uses of adjacent properties and with the comprehensive plan, to include an evaluation of the effects on adjoining properties of such elements as traffic circulation, noise, glare, odor, fumes, and vibration;
8. A list containing the names and mailing addresses of all owners of property within five hundred (500) feet of the property in question;

9. A fee as established by Ordinance (Resolution);
10. A narrative addressing each of the applicable criteria contained in Section 520.

520 **General Standards For All Conditional Uses.**

In addition to the specific requirements for conditionally permitted uses as specified in Section 530, the Board shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

1. Is in fact a conditional use as established under the provisions of Article 7 and appears on the Schedule of District Regulations adopted for the zoning district involved;
2. Will be in accordance with the general objectives, or with any specific objective, of the City's (Village's, County's, Township's) comprehensive plan and/or the zoning ordinance (resolution);
3. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area;
4. Will not be hazardous or disturbing to existing or future neighboring uses;
5. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;
6. Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;
7. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors;
8. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares;
9. Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.

530 **Specific Criteria For Conditional Uses.**

The following are specific conditional use criteria and requirements for those uses conditionally permitted in this Ordinance (Resolution) as provided for in (indicate Section(s), Official Schedule, etc.). Nothing in this Section shall prohibit the Board of Zoning Appeals from prescribing supplementary conditions and safeguards in addition to these requirements in accordance with Article 5.

1. Public Service Facility (Indicate Districts)

   a. All permanent buildings shall be constructed and designed so as to conform with the setback and building design of existing uses in the district.

   b. Screening and plantings to buffer any structures other than buildings from adjacent residential uses are required.

2. Church (Indicate Districts)

   a. The lot area shall be adequate to accommodate the required off-street parking requirements of the church.

   b. The church building shall be setback from any adjacent residential property line a minimum of fifty (50) feet.

   c. Parking shall not be permitted within fifty (50) feet of any side or rear property line.

   d. A cemetery shall not be a permitted use in conjunction with the church.

3. Cemetery (Indicate Districts)

   a. The site shall have direct access to a major thorough-fare which the Board of Zoning Appeals determines is adequate to serve the size of the facility proposed.

   b. Any new cemetery shall be located on a site containing not less than twenty-five (25) acres.

   c. All buildings, including but not limited to mausoleums and maintenance buildings, shall not be located within 100 feet of any property line.

   d. All graves or burial lots shall be set back not less than fifty (50) feet from any property line.

4. Attorney, Architect, Accountant, Engineer, Insurance Agency, Real Estate, Tax Preparation Service, and Bookkeeping Service Offices (Indicate Districts)

   a. Parking spaces shall be provided as required in this Ordinance (Resolution), provided that the Board of Zoning Appeals may increase the number of required spaces on the basis of the nature of the office and on the basis of generally known parking conditions in the neighborhood.

   b. The design, location, and surface of the parking area shall be subject to approval of the Board of Zoning Appeals so as to reduce congestion, promote safety, and to reduce the impact on the residential character of the neighborhood.

   c. One sign, not exceeding four (4) square feet in area and mounted flush against the building, shall be permitted.

5. Veterinary Clinic and Kennel (Indicate Districts)

   a. Outdoor pens and exercise runs shall be kept in a clean and sanitary condition and shall be screened from public view. A screening plan shall be submitted to the Board of Zoning Appeals for approval.

   b. Sanitation practices shall be adequate to assure that objectionable odors shall not be noticeable on or off the lot considering various wind conditions.

   c. The applicant shall submit a written statement showing the measures and practices he will use to reduce the noice level in the design of the building and the management or rotation of animals in outdoor exercise runs.

   d. No dead animals shall be buried on the premises and incineration of dead animals shall not create odors or smoke.

6. Child Day Care Center/Type A Family Day-Care Home (Indicate Districts)

   a. Outdoor playgrounds, tot lots, exercise areas, etc. shall be fully enclosed by a fence, the height and design which shall be approved by the Board of Zoning Appeals.

   b. The applicant shall submit a parking and traffic circulation plan to the Board of Zoning Appeals for approval. The design, location, and surface of the parking areas and vehicular approaches shall be subject to approval by the Board of Zoning Appeals so as to reduce congestion, promote safety, and reduce the impact on the residential character of the neighborhood. The plan shall provide for the separation of incoming and outgoing vehicles during high volume periods and shall provide a safe drop off point for children that will not impede other traffic.

   c. One sign, not exceeding four (4) square feet in area and mounted flush against the building, shall be permitted.

7. Funeral Home (Indicate Districts)

   a. The buildings shall be designed so as to conform with the architectural character of the residential neighborhood.

   b. The applicant shall submit a parking and traffic circulation plan to the Board of Zoning Appeals for approval. The design, location, and surface of the parking areas and vehicular approaches shall be subject to approval by the Board of Zoning Appeals so as to reduce congestion, promote safety, and reduce the impact on the residential character of the neighborhood. The plan shall provide for the separation of incoming and outgoing vehicles during high volume periods and shall provide a safe drop off point for visitors that will not impede other traffic.

8. Boarding Home, Rooming House (Indicate Districts)

   a. No more than one person shall occupy each sleeping room.

   b. Fire escapes shall be provided as approved by the Board of Zoning Appeals.

   c. Fire exit instructions shall be posted in each sleeping room.

   d. All applicable provisions of the fire code shall be met and certification of such compliance by the appropriate official shall accompany the application.

9. Tourist Home, Bed/Breakfast Home (Indicate Districts)

   a. No more than two adults shall occupy each sleeping room. Children under twelve years of age are permitted in the same occupancy provided that no more than (five) 5 persons occupy one room.

   b. Fire escapes shall be provided as approved by the Board of Zoning Appeals.

   c. Fire exit instructions shall be posted in each sleeping room.

   d. All applicable provisions of the fire code shall be met and certification of such compliance by the appropriate official shall accompany the application.

   e. The facility shall be operated so that guests reside at the home for not longer than one continuous week.

   f. The facility shall contain not more than four (4) sleeping rooms for guests.

   (ADD OTHERS AS REQUIRED)

540 **Public Hearing.**

The Board of Zoning Appeals shall hold a public hearing within thirty (30) days after it receives an application for a conditional use permit submitted by an applicant through the Zoning Administrator.

541 **Notice of Public Hearing.**

Before conducting the public hearing required in Section 540, notice of such hearing shall be given in one or more newspapers of general circulation in the City (Village, County, Township) at least ten (10) days before the date of said hearing. The notice shall set forth the time and place of the hearing, and shall provide a summary explanation of the conditional use proposed.

542 **Notice to Parties of Interest.**

Prior to conducting the public hearing required in Section 540, written notice of such hearing shall be mailed by the Chairman of the Board of Zoning Appeals, by first class mail, at least ten (10) days before the date of the hearing to all parties of interest, to include all property owners listed in the application. The notice shall contain the same information as required in Section 541 for notices published in newspapers.

550 **Action by the Board of Zoning Appeals.**

Within thirty (30) days after the date of the public hearing required in Section 540, the Board shall take one of the following actions:

1. Approve issuance of the conditional use permit by making an affirmative finding in writing that the proposed conditional use is to be located in a district wherein such use may be conditionally permitted, that all conditions for approval of such use in such district have been met, and that such use will neither result in significant negative impacts upon nor conflict with surrounding uses. Such written finding may also prescribe supplementary conditions and safeguards as specified in Section 551. Upon making an affirmative finding, the Board shall direct the Zoning Administrator to issue a conditional use permit for such use which shall list all conditions and safeguards specified by the Board for approval.
2. Make a written finding that the application is deficient in information or is in need of modification and is being returned to the applicant. Such finding shall specify the information and/or modifications which are deemed necessary.
3. Make a written finding that the application is denied, such finding specifying the reason(s) for disapproval.

If an application is disapproved by the Board, the applicant may seek relief through the Court of Common Pleas. Appeals from Board decisions shall be made in the manner specified in Section 1340.

551 **Supplementary Conditions and Safeguards.**

In granting approval for any conditional use, the Board may prescribe appropriate conditions and safeguards in conformance with this Ordinance (Resolution). Any violation of such conditions and safeguards, when made a part of the terms under which the conditional use is granted, shall be deemed a punishable violation of this Ordinance (Resolution).

552 **Expiration of Conditional Use Permit.**

A conditional use permit shall be deemed to authorize only one particular conditional use, and said permit shall automatically expire if such conditionally permitted use has not been instituted or utilized within one (1) year of the date on which the permit was issued, or if for any reason such use shall cease for more than two (2) years.

560 **PROCEDURE AND REQUIREMENTS TO DETERMINE THAT A USE IS SUBSTANTIALLY SIMILAR.**

Where a specific use is proposed that is not listed or provided for in this Ordinance (Resolution), the Board of Zoning Appeals may make a determination, upon appeal, that the proposed use is substantially similar to a specific use that is listed or provided for in this Ordinance (Resolution). If the Board finds that a use is substantially similar to a specific use listed in this Ordinance (Resolution), the substantially similar use is deemed to be a substantially similar permitted use in those districts where the specific use is a permitted use, and a substantially similar conditional use in those districts where the specific use is a conditionally permitted use.

In formulating a determination that a proposed use is a substantially similar use, the Board shall follow the procedures relating to appeals and variances as specified in Article 4 of this Ordinance (Resolution). Upon making a determination that a proposed use is substantially similar, the Board shall notify the Council (County Commissioners, Township Trustees) of its decision and shall include in its written findings the reasoning upon which the decision is based. Unless the decision is rejected within thirty (30) days of its receipt by the Council (County Commissioners, Township Trustees), such substantially similar use determination by the Board shall become effective.

561 **Remedy by Application For Amendment.**

If the Board determines that a proposed use is not substantially similar, such determination shall not be appealed to the Council (County Commissioners, Township Trustees), but remedy may be sought by the appellant through the submission of an application for amendment as prescribed in Article 6.

562 **Standards for Consideration of Substantially Similar Uses.**

The following standards shall be considered by the Board when making a determination that a use is substantially similar to a permitted or a conditional use within a specific district:

1. The compatibility of the proposed use with the general use classification system as specified in this Ordinance (Resolution).
2. The nature, predominant characteristics, and intensity of the proposed use in relation to those uses specified by this Ordinance (Resolution) as being permitted, or in the case of a conditional use, conditionally permitted, in that district.

3. The size, dimensional requirements, parking requirements, traffic generation potential, and other regulatory considerations normally associated with uses as specified in this Ordinance (Resolution).

563 **Effect of Determination That a Use Is Substantially Similar.**

Should a use be determined to be substantially similar to a specific permitted or conditionally permitted use provided for in this Ordinance (Resolution), it shall then be permitted in the same manner and under the same conditions and procedures as the use is permitted to which it has been found to be substantially similar.

564 **Record of Substantially Similar Uses.**

The Zoning Administrator shall maintain as a public record a listing of all uses which have been determined to be substantially similar. For each such use the record shall include the use as listed in the Ordinance (Resolution), the use unlisted in the Ordinance (Resolution) about which the determination of substantial similarity was made, and the dates of any actions thereupon by the Board of Zoning Appeals or the Council (County Commissioners, Township Trustees). This record shall also contain the same information for all uses which have been determined not to be substantially similar. The Zoning Administrator shall consult this record in the process of issuing future permits.

570 **REGULATION OF ACCESSORY USES**

The provisions of Sections 570 to 575 inclusive of this Ordinance (Resolution) shall apply to the location and maintenance of accessory uses as herein defined.

571 **Purpose**

It is the purpose of Sections 570 to 575 inclusive of this Ordinance (Resolution) to regulate accessory uses in order to promote the public health, safety, and welfare. It is the intent of these Sections to permit such uses to be established and maintained in a manner which makes them compatible with principal uses and harmonious with uses upon adjacent properties.

572 **Definition**

"Accessory Use" means a use, object, or structure constructed or installed on, above, or below the surface of a parcel, which is located on the same lot as a principal use, object, or structure, and which is subordinate to or serves the principal use, object, or structure, is subordinate in area to the principal use, object, or structure, and is customarily incidental to the principal use, object, or structure. Among other things, "Accessory Use" includes anything of a subordinate nature attached to or disattached from a principal structure or use, such as fences, walls, sheds, garages, parking places, decks, poles, poster panels, and billboards. Except as otherwise required in this Ordinance (Resolution), an accessory use shall be a permitted use.

573 **General Requirements**

Except as otherwise provided in this Ordinance (Resolution), an accessory use or structure shall be permitted in association with a principal use or structure provided that:

1. It shall be thirty-five (35) percent or less of the gross floor area of the principal use or structure, except where additional space is needed to comply with off-street parking requirements.
2. It shall not contain or be used as a dwelling unit.
3. It shall not exceed eighteen (18) feet in height.
4. It shall meet all yard requirements of the principal use.

574 **Dwellings as Accessory Uses**

Dwellings may be accessory uses in residential districts if located inside the principal home or if detached as a garage apartment, only if used as a residence by relatives or household servants and no rent is charged. Mobile home trailers shall not be permitted as accessory uses in (specify districts).

575 **Accessory Elderly Dwelling Unit**

Notwithstanding the provisions of Subsection 2 of Section 901 of this Ordinance (Resolution), an owner-occupied single-family dwelling unit may be converted to allow the incorporation of one additional dwelling unit for the exclusive occupancy of an elderly household, a member of which shall be an elderly person related to the owner of the single-family dwelling unit. Such accessory elderly dwelling unit shall be wholly contained within the existing principal building or shall be attached to it by a common wall, floor or ceiling. The application for the zoning permit for such conversion shall be accompanied by an affidavit attesting to the owner's present occupancy of the dwelling unit and to the age and relationship of the elderly person.

576 **Retail Sales and Services as Accessory Uses**

Retail sales and services are permitted as accessory uses when clearly incidental to the principal use. With the exception of restaurants in conjunction with a motel, such uses shall be conducted wholly within the principal building, and without exterior advertising or display. These activities shall be conducted solely for the convenience of the employees, patients, patrons, students, or visitors and not for the general retail public. In hospitals and clinics these accessory uses may include drug stores, florists, gift and book shops, and cafeterias. In institutional settings, office buildings, hotels, country club houses, and airports, such activities may include gift and book shops, restaurants, cafeterias and coffee shops, lounges, pro shops, and beauty and barber shops.

ARTICLE 6

AMENDMENT (MUNICIPAL)

600 Procedure For Amendment or District Changes. (Municipal)

This Ordinance may be amended utilizing the procedures specified in Sections 601-613, inclusive, of this Ordinance.

601 General. (Municipal)

Whenever the public necessity, convenience, general welfare, or good zoning practices require, City (Village) Council may by ordinance, after receipt of recommendation thereon from the Planning Commission, and subject to procedures provided by law, amend, supplement, change or repeal the regulations, restrictions, and boundaries or classification of property.

602 Initiation of Zoning Amendments. (Municipal)

Amendments to this ordinance may be initiated in one of the following ways:

1. By the adoption of a motion by the Planning Commission;
2. By the adoption of a resolution by City (Village) Council;
3. By the filing of an application by at least one (1) owner or lessee of property within the area proposed to be changed or affected by said amendment.

603 Contents of Application For Zoning Map Amendment. (Municipal)

Applications for amendments to the Official Zoning Map adopted as part of this Ordinance by Article 7 shall contain at least the following information:

1. The name, address, and phone number of the applicant;
2. The proposed amending ordinance, approved as to form by the City (Village) Legal Advisor;
3. A statement of the reason(s) for the proposed amendment;
4. Present use;
5. Present zoning district;
6. Proposed use;
7. Proposed zoning district;

8. A vicinity map at a scale approved by the Zoning Administrator showing property lines, thoroughfares, existing and proposed zoning, and such other items as the Zoning Administrator may require;

9. A list of all property owners and their mailing addresses who are within, contiguous to, or directly across the street from the parcel(s) proposed to be rezoned and others that may have a substantial interest in the case, except that addresses need not be included where more than ten (10) parcels are to be rezoned;

10. A statement on the ways in which the proposed amendment relates to the comprehensive plan;

11. A fee as established by City (Village) Council.

604 **Contents of Application For Zoning Text Amendment. (Municipal)**

Applications for amendments proposing to change, supplement, amend, or repeal any portion(s) of this Ordinance, other than the Official Zoning Map, shall contain at least the following information:

1. The name, address, and phone number of the applicant;

2. The proposed amending ordinance, approved as to form by the City (Village) Legal Advisor;

3. A statement of the reason(s) for the proposed amendment;

4. A statement explaining the ways in which the proposed amendment relates to the comprehensive plan;

5. A fee as established by City (Village) Council.

605 **Transmittal to Planning Commission. (Municipal)**

Immediately after the adoption of a resolution by the City (Village) Council or the filing of an application by at least one (1) owner or lessee of property, said resolution or application shall be transmitted to the Commission.

606 **Submission to Director of Transportation. (Municipal)**

Before any zoning amendment is approved affecting any land within three hundred (300) feet of the centerline of a proposed new highway or highway for which changes are proposed as described in the certification to local officials by the Director of Transportation, or within a radius of five hundred (500) feet from the point of intersection of said centerline with any public road or highway, the Commission shall give notice, by registered

or certified mail, to the Director of Transportation. The Commission may proceed as required by law; however, the City (Village) Council shall not approve the amendment for one hundred twenty (120) days from the date the notice is received by the Director of Transportation. If the Director of Transportation notifies the City (Village) that he shall proceed to acquire the land needed, then the City (Village) shall refuse to approve the rezoning. If the Director of Transportation notifies the City (Village) that acquisition at this time is not in the public interest, or upon the expiration of the one hundred twenty (120) day period or any extension thereof agreed upon by the Director of Transportation and the property owner, the City (Village) Council shall proceed as required by law.

607 **Recommendation by Planning Commission. (Municipal)**

Within sixty (60) days from the receipt of the proposed amendment, the Planning Commission shall transmit its recommendation to the City (Village) Council. The Planning Commission may recommend that the amendment be granted as requested, or it may recommend a modification of the amendment as requested, or it may recommend that the amendment be denied. The written decision of the Planning Commission shall indicate the specific reason(s) upon which the recommendation is based, to include the basis for their determination that the proposed amendment is or is not consistent with the comprehensive plan.

608 **Public Hearing by City (Village) Council.**

Upon receipt of the recommendation from the Planning Commission, City (Village) Council shall schedule a public hearing. Said hearing shall be not more than forty (40) days from the receipt of the recommendation from the Planning Commission.

609 **Notice of Public Hearing in Newspaper. (Municipal)**

Notice of the public hearing required in Section 608 shall be given by City (Village) Council by at least one (1) publication in one (1) or more newspapers of general circulation in the City (Village) affected. Said notice shall be published at least thirty (30) days before the date of the required hearing. The published notice shall set forth the time and place of the public hearing and a summary of the proposed amendment.

610 **Notice to Property Owners by City (Village) Council.**

If the proposed amendment intends to rezone or redistrict ten or less parcels of land, as listed on the tax duplicate, written notice of the hearing shall be mailed by the Clerk of Council, by first class mail, at least twenty (20) days before the day of the public hearing to all owners of property within, contiguous to, and directly across the street from such

area proposed to be rezoned or redistricted to the addresses of such owners appearing on the County Auditor's current tax list or the Treasurer's mailing list, and to such other list or lists that may be specified by City (Village) Council. The failure to deliver the notification as provided in this section shall not invalidate any such amendment. The notice shall contain the same information as required of notices published in newspapers as specified in Section 609.

611 **Action by City (Village) Council.**

Within thirty (30) days after the public hearing required by Section 607, the City (Village) Council shall either adopt or deny the recommendation of the Planning Commission or adopt some modification thereof. In the event the City (Village) Council denies or modifies the recommendation of the Planning Commission, it must do so by not less than three-fourths of the full membership of City (Village) Council. No such ordinance shall be passed unless it has been fully and distinctly read on three different days except that such ordinance may become emergency legislation if three-fourths of the members of City (Village) Council vote to dispense with this rule.

612 **Effective Date and Referendum. (Municipal)**

Such amendment adopted by City (Village) Council shall become effective thirty (30) days after the date of such adoption unless within thirty (30) days after the passage of the ordinance there is presented to the City (Village) Clerk a petition, signed by a number of qualified voters residing in the City (Village) equal to not less than ten (10) per cent of the total vote cast in such area at the last preceding general election at which a Governor was elected, requesting the City (Village) Council to submit the zoning amendment to the electors of the City (Village) for approval or rejection at the next general election.

No amendment for which such referendum vote has been requested shall be put into effect unless a majority of the vote cast on the issue is in favor of the amendment. Upon certification by the Board of Elections that the amendment has been approved by the voters, it shall take immediate effect.

613 **Annexation. (Municipal)**

All land annexed to the City (Village) subsequent to the adoption of this ordinance shall remain subject to the previous County or Township zoning district regulations until such time as the Official Zoning Map is amended according to the provisions of this Article. All land annexed to the City (Village) which, prior to annexation, is not subject to County or Township zoning shall remain unzoned until the Official Zoning Map is amended according to the provisions of this Article.

ARTICLE 6

AMENDMENT (COUNTY AND TOWNSHIP)

600 **Procedure For Amendments or District Changes. (County and Township)**

This resolution may be amended by utilizing the procedures specified in Section 601-614, inclusive, of this resolution.

601 **General. (County and Township)**

Whenever the public necessity, convenience, general welfare, or good zoning practices require, the Board of County Commissioners (Township Trustees) may by resolution, after receipt of recommendation thereon from the Zoning Commission, and subject to the procedures provided by law, amend, supplement, change or repeal the regulations, restrictions, and boundaries or classification of property.

602 **Initiation of Zoning Amendments. (County and Township)**

Amendments to this resolution may be initiated in one of the following ways:

1. By adoption of a motion by the Zoning Commission;
2. By adoption of a resolution by the Board of County Commissioners (Township Trustees);
3. By the filing of an application by at least one (1) owner or lessee of property within the area proposed to be changed or affected by said amendment.

603 **Contents of Application For Zoning Map Amendment. (County and Township)**

Applications for amendments to the Official Zoning Map adopted as part of this resolution by Article 7 shall contain at least the following information:

1. The name, address, and phone number of applicant;
2. The proposed amending resolution, approved as to form by the County Prosecutor;
3. A statement of the reason(s) for the proposed amendment;
4. Present use;
5. Present zoning district;

6. Proposed use;

7. Proposed zoning district;

8. A vicinity map at a scale approved by the Zoning Administrator showing property lines, thoroughfares, existing and proposed zoning, and such other items as the Zoning Administrator may require;

9. A list of all property owners and their mailing addresses who are within, contiguous to, or directly across the street from the parcel(s) proposed to be rezoned and others that may have a substantial interest in the case, except that addresses need not be included where more than ten (10) parcels are to be rezoned;

10. A statement on the ways in which the proposed amendment relates to the comprehensive plan;

11. A fee as established by Resolution of the Board of County Commissioners (Township Trustees).

604 **Contents of Application For Zoning Text Amendment. (County and Township)**

Application for amendments proposing to change, supplement, amend, or repeal any portion(s) of this Resolution, other than the Official Zoning Map, shall contain at least the following information:

1. The name, address, and phone number of the applicant;

2. The proposed amending resolution, approved as to form by the County Prosecutor;

3. A statement of the reason(s) for the proposed amendment;

4. A statement explaining the ways in which the proposed amendment relates to the comprehensive plan;

5. A fee as established by Resolution of the Board of County Commissioners (Township Trustees).

605 **Transmittal to Zoning Commission. (County and Township)**

Immediately after the adoption of a resolution by the Board of County Commissioners (Township Trustees) or the filing of an application by at least one (1) owner or lessee of property, said resolution or application shall be transmitted to the Commission.

606 **Submission to County or Regional Planning Commission. (County and Township)**

Within five (5) days after the adoption of a motion by the Commission, transmittal of a resolution by the Board of County Commissioners (Township

Trustees), or the filing of an application by at least one (1) owner or lessee, the Zoning Commission shall transmit a copy of such motion, resolution, or application, together with the text and map pertaining to the case in question, to the County or Regional Planning Commission. The County or Regional Planning Commission shall recommend the approval or denial of the proposed amendment or the approval of some modification thereof and shall submit such recommendation to the Zoning Commission. Such recommendation shall be considered at the public hearing held by the Zoning Commission.

607 **Submission to Director of Transportation. (County and Township)**

Before any zoning amendment is approved affecting any land within three hundred (300) feet of the centerline of a proposed new highway or highway for which changes are proposed as described in the certification to local officials by the Director of Transportation, or within a radius of five hundred (500) feet from the point of intersection of said centerline with any public road or highway, the Commission shall give notice, by registered or certified mail, to the Director of Transportation. The Zoning Commission may proceed as required by law; however, the Board of County Commissioners (Township Trustees) shall not approve the amendment for one hundred twenty (120) days from the date the notice is received by the Director of Transportation. If the Director of Transportation notifies the Board of County Commissioners (Township Trustees) that he shall proceed to acquire the land needed, then the Board of County Commissioners (Township Trustees) shall refuse to approve the rezoning. If the Director of Transportation notifies the Board of County Commissioners (Township Trustees) that acquisition at this time is not in the public interest or upon the expiration of the one hundred twenty (120) day period or any extension thereof agreed upon by the Director of Transportation and the property owner, the Board of County Commissioners (Township Trustees) shall proceed as required by law.

608 **Public Hearing by Zoning Commission. (County and Township)**

The Zoning Commission shall schedule a public hearing after the adoption of their motion, the transmittal of a resolution from the Board of County Commissioners (Township Trustees), or the filing of an application for zoning amendment. Said hearing shall be not less than twenty (20) nor more than forty (40) days from the date of adoption of such motion, transmittal of such resolution, or filing of such application.

609 **Notice of Public Hearing in Newspaper. (County and Township)**

Before holding the public hearing as required in Section 608, notice of such hearing shall be given by the Zoning Commission by at least one (1) publication in one (1) or more newspapers of general circulation in the County (Township) at least ten (10) days before the date of said hearing. This notice shall set forth the time and place of the public

hearing, the nature of the proposed amendment, and a statement that after the conclusion of such public hearing the matter will be referred to the Board of County Commissioners (Township Trustees) for further determination.

610 **Notice to Property Owners by Zoning Commission. (County and Township)**

If the proposed amendment intends to rezone or redistrict ten (10) or less parcels of land as listed on the tax duplicate, written notice of the hearing shall be mailed by the Zoning Commission by first class mail, at least ten (10) days before the date of the public hearing, to all owners of property within, contiguous to, and directly across the thoroughfare from such area proposed to be rezoned or redistricted to the address of such owners appearing on the County Auditor's current tax list or the Treasurer's mailing list and to such other list or lists that may be specified by the Board of County Commissioners (Township Trustees). The failure to deliver the notice, as provided in this section, shall not invalidate any such amendment. The notice shall contain the same information as required of notices published in newspapers as specified in Section 609.

611 **Recommendation by Zoning Commission. (County and Township)**

Within thirty (30) days after the public hearing required by Section 608, the Zoning Commission shall recommend to the Board of County Commissioners (Township Trustees) that the amendment be granted as requested, or it may recommend a modification of the amendment requested, or it may recommend that the amendment be not granted. The written decision of the zoning commission shall indicate the specific reason(s) upon which the recommendation is based, to include the basis for their determination that the proposed amendment is or is not consistent with the comprehensive plan.

612 **Public Hearing by Board of County Commissioners. (Township Trustees)**

Within thirty (30) days from the receipt of the recommendation of the Zoning Commission, the Board of County Commissioners (Township Trustees) shall hold a public hearing. Notice of such public hearing in a newspaper of general circulation shall be given by the Board of County Commissioners (Township Trustees) as specified in Section 609.

613 **Action by Board of County Commissioners. (Township Trustees)**

Within twenty (20) days after the public hearing required by Section 612, the Board of County Commissioners (Township Trustees) shall either adopt or deny the recommendation of the Zoning Commission or adopt some modification thereof. In the event the Board of County Commissioners (Township Trustees) denies or modifies the recommendation of the Commission, the unanimous vote of the Board of County Commissioners (Township Trustees) is required.

614 **Effective Date and Referendum. (County and Township)**

Such amendment adopted by the Board of County Commissioners (Township Trustees) shall become effective thirty (30) days after the date of such adoption unless within thirty (30) days after the adoption of the amendment there is presented to the Board of County Commissioners (Township Trustees) a petition, signed by a number of qualified voters residing in the unincorporated area of the County (Township) or part thereof included in the zoning plan equal to not less than eight (8) per cent of the total vote cast for all candidates for Governor in such area at the last preceding general election at which a Governor was elected, requesting the Board of County Commissioners (Township Trustees) to submit the amendment to the electors of such area, for approval or rejection, at the next primary or general election.

No amendment for which such referendum vote has been requested shall be put into effect unless a majority of the votes cast on the issue is in favor of the amendment. Upon certification by the Board of Elections that the amendment has been approved by the voters it shall take immediate effect.

ARTICLE 7

ESTABLISHMENT OF DISTRICTS

700 **Purpose.**

The purpose of this article is to establish zoning districts in order to realize the general purposes set forth in the preamble of this Ordinance (Resolution), to provide for orderly growth and development, and to protect the property rights of all individuals by assuring the compatibility of uses and practices within districts.

710 **Establishment of Districts.**

The following zoning districts are hereby established for the City (Village, County, Township) of _____, Ohio:

R-1	Agricultural and Rural Residential
R-2	Single-Family Residential
R-4	Single-Family Residential
R-8	Single-Family/Two-Family Residential
R-12	Townhouse/Condominium Residential
R-16	Multifamily Residential
R-30	Multifamily Residential
R-45	Multifamily Residential
C-O	Commercial Office District
C-N	Commercial Neighborhood District
C-G	Commercial General District
C-H-S	Commercial Highway Service District
I-G	General Industrial District
I-P	Industrial Park District
P-U-D	Planned Unit Development District
M-H-P	Manufactured Home Park District
S-D	Special District
O-D	Overlay District

GO DIRECTLY TO COMMENTARY!

Do not pass go, do not collect $200

Nothing in this Article shall be construed to require the actual location of any district on the Official Zoning Map, as it is the intent of this Ordinance (Resolution) to provide the flexibility in its administration to allow future expansion and emendation.

720 **Zoning District Map.**

The districts established in Section 710, as shown on the Official Zoning Map, which, together with all data, references, explanatory material and notations thereon, are hereby officially adopted as part of this Ordinance (Resolution) and hereby incorporated by reference herein, thereby having the same force and effect as if herein fully described in writing.

721 **Zoning Map Legend.**

There shall be provided on the Official Zoning Map a legend which shall list the name of each zoning district and indicate the symbol for that district. A color, combination of colors, or black and white patterns may be used in place of symbols to identify the respective zoning districts in such legend. In addition to such legend, the Official Zoning Map shall provide sufficient space for compliance with Section 725.

722 **Identification of Official Zoning Map.**

The Official Zoning Map shall be properly identified by the signature of the Mayor (Chairman of the Board of County Commissioners, Chairman of the Board of Township Trustees), as attested by the City (Village, County, Township) Clerk, and bearing the official seal. The Map shall be maintained by the Zoning Administrator, and shall remain on file in the office of the Clerk. The Official Zoning Map shall control whenever there is an apparent conflict between the district boundaries as shown on the Map and the description(s) as found in the text of this Ordinance (Resolution) or any other ordinance (resolution). The Official Zoning Map shall be a reproducible document, and copies shall be made available to the public upon request and upon payment of a fee as established by ordinance (resolution). Not later than January 30 of each year, the map shall be recertified by the Mayor (Chairman) and the Clerk.

723 **Interpretation of District Boundaries.**

The following rules shall be used to determine the precise location of any zoning district boundary unless such boundary is specifically indicated on the Official Zoning Map:

1. Where district boundaries are so indicated as approximately following the center lines of thoroughfares or highways, street lines, or highway right-of-way lines, such center lines, street lines, or highway right-of-way lines shall be construed to be said boundaries;

2. Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries;

3. Where district boundaries are so indicated that they are approximately parallel to the center lines or street lines of streets, or the center lines or right-of-way lines of highways, such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the Official Zoning Map. If no distance is given, such dimensions shall be determined by the use of the scale shown on the Official Zoning Map;

4. Where the boundary of a district follows a railroad line, such boundary shall be deemed to be located in the middle of the main tracks of said railroad line;

5. Where the boundary of a district follows a stream, lake, or other body of water, said boundary line shall be deemed to be at the limit of the jurisdiction of the City (Village, County, Township) unless otherwise indicated;

6. Where district boundaries are so indicated that they follow or approximately follow the limits of any municipal corporation, such boundaries shall be construed as following such limits;

7. Whenever any street, alley, or other public way is vacated by official Council (Board of Commissioners, Board of Township Trustees) action, the zoning district adjoining each side of such street, alley, or public way shall automatically be extended to the center of such vacation, and all areas within that vacation shall thenceforth be subject to all regulations appropriate to the respective extended districts.

All questions and disputes concerning the exact location of zoning district boundaries shall be resolved by the Board of Zoning Appeals.

724 **Zoning Upon Annexation.**

The following regulations shall apply to any areas annexed to the City (Village):

1. If any lots, tracts, or lands are not subject to zoning at the time of their annexation, they shall be classified into whichever districts established by this Ordinance (Resolution) most closely resembles the existing uses at the time of the annexation. Such classification shall be recommended to Council by the Planning Commission and shall be approved by Council resolution.

2. Any lots, tracts, or areas which are subject to zoning at the time of their annexation shall be classified as being in whichever district established by this Ordinance (Resolution) most closely resembles the zoning district that existed in the annexation. Such classification shall be recommended to Council by the Planning Commission and shall be approved by Council resolution.

3. With respect to any annexation, the Planning Commission shall within ninety (90) days conduct a public hearing on the matter of permanent zoning classification.

725 **Zoning Map Amendments.**

Within fifteen (15) days of the effective date of any change of a zoning district classification or boundary, the Zoning Administrator shall amend the Official Zoning Map to reflect such change, and shall note the effective date of such change, together with appropriate reference to the ordinance (resolution) authorizing such change. The Official Zoning Map shall then be signed by the Mayor (Chairman) and attested to by the Clerk.

ARTICLE 8

DISTRICT REGULATIONS

800 Compliance with Regulations

The regulations for each district set forth by this Ordinance (Resolution) shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as hereinafter provided:

1. No building, structure, or land shall be used or occupied and no building or structure or part thereof shall be erected, constructed, reconstructed, moved, or structurally altered except in conformity with all of the regulations herein specified for the district in which it is located;

2. No building or other structure shall be erected or altered:

   a. to provide for greater height or bulk;

   b. to accommodate or house a greater number of families;

   c. to occupy a greater percentage of lot area;

   d. to have narrower or smaller rear yards, front yards, side yards, or other open spaces;

   than herein required, or in any other manner be contrary to the provisions of this Ordinance (Resolution);

3. No yard or lot existing at the time of passage of this Ordinance (Resolution) shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Ordinance (Resolution) shall meet at least the minimum requirements set forth herein.

810 Official Schedule of District Regulations Adopted

District regulations shall be as set forth in the Official Schedule of District Regulations hereby adopted and declared to be a part of this Ordinance (Resolution) and in Article 9 of this Ordinance (Resolution), "Supplementary District Regulations."

811 Identification of the Official Schedule of District Regulations

The Official Schedule of District Regulations shall be identified by the signature of the Mayor (Chairman of the Board of County Commissioners, Chairman of the Board of Township Trustees).

GO DIRECTLY TO COMMENTARY!

Do not pass go, do not collect $200

SAMPLE A: CITY OF LOGAN

150.44 GENERAL USE CLASSIFICATION SYSTEM

For the purpose of this Ordinance the general use classification system established in this Section shall be used to classify those uses that will be permitted, conditionally permitted, regulated, or prohibited either specifically or by omission, and in making a determination that a use not listed is substantially similar.

USE CLASSIFICATION CATEGORY	DESCRIPTION OF USE CLASSIFICATION CATEGORY
1.	Residential uses are places where persons live or reside and are associated with dwelling units as defined in this Ordinance.
2.	Public uses are owned or operated by governmental agencies for administrative, educational, cultural, recreational, and similar activities that benefit or provide services to the public.
3.	Quasipublic uses are activities of a religious, educational, charitable, social, philanthropic, and health nature, and non-profit membership organizations that have more limited public purposes than public uses, but which are not organized for profit.
4.	Administrative and business office uses are primarily engaged in general administration, management, supervision, purchasing, and accounting. They involve no retail sales and stock no goods for distribution or sale.
5.	Professional office uses deliver professional tangible and intangible services to the general public and are associated with normally recognized professions most of which are regulated, licensed, or certified by the State of Ohio.
6.	Retail store uses include uses primarily engaged in selling merchandise for personal and household consumption and rendering services clearly incidental to the sale of such goods.
7.	Personal service uses generally are concerned with the care and maintenance of tangible property or the provision of intangible services.

8. Consumer service uses generally involve the care and maintenance of tangible property or the provision of intangible services for personal consumption.

9. Trade services uses generally include establishments engaged in the general construction, maintenance, or the repair of real or other tangible property.

10. Automotive uses include sales and services directly associated with motor vehicles and other types of transportation.

11. Food, lodging, and beverage service uses include commercial establishments and non profit institutions engaged in furnishing food, beverages, or lodging for a fee or on a membership fee basis.

12. Research and development uses involve research related to product development in conjunction with testing, laboratory, and minor fabricating and assembly operations.

13. Wholesaling and storage uses are associated with transporting, storing, handling or selling merchandise primarily to retailers, industrial, institutional, or professional uses, or to other wholesalers, or acting as agents in buying merchandise for such persons or organizations.

14. Recreation uses include activities used by persons during leisure time for entertainment for a fee or on a membership fee basis.

15. Manufacturing uses include all uses involving processing, fabrication, packaging, assembly and related functions whether using machinery or labor and associated with the industrial operations of producing goods, components, and other related items.

16. Other uses shall include all other activities not otherwise classified.

150.45 OFFICIAL AND SUPPLEMENTARY SCHEDULE OF PERMITTED USES AND DIMENSIONAL REQUIREMENTS

The Official and Supplementary Schedule of Permitted Uses and Dimensional Requirements, hereafter referred to as the Official Schedule, or Supplementary Schedule as contained in Appendix 1 of this Ordinance is hereby adopted.

The Official Schedule specifies which uses are permitted and conditionally permitted in the zoning districts established in Sections 150.401 to 150.409 of this Ordinance. Any use not specifically listed as either permitted or

conditionally permitted shall be a prohibited use in the appropriate zoning district and shall only be permitted upon rezoning of the land in question or the amendment of this Ordinance as provided in Sections 150.25 to 150.602 of this Ordinance or upon a finding that a use is substantially similar as provided in Sections 150.24 to 150.242 of this Ordinance. The number in parenthesis following the specific use in the Official Schedule depicts the use classification category of the listed use as established in Section 150.44 of this Ordinance. The number in the "page no." column following any conditionally permitted use in the Official Schedule shows the page number in this Ordinance where the specific criteria for the conditionally permitted use are listed in Section 150.49 of this Ordinance. Conditional uses are permitted following the procedures and requirements specified in Sections 150.22 to 150.231 of this Ordinance.

The Official and Supplementary Schedule also contains the major dimensional requirements for all uses within the appropriate district. No building, structure or part thereof shall be erected, constructed, reconstructed, moved, or structurally altered unless it is in conformity with all dimensional requirements specified in the Official or Supplementary Schedule, or in other sections of this Ordinance, unless a variance has been granted by the Board of Zoning Appeals.

In addition to the dimensional requirements set forth in the Official Schedule, other sections of this ordinance specify special dimensional requirements. In such cases the most restrictive standard or requirement shall take precedence, unless the ordinance provides a specific exception.

NOTES TO SCHEDULE AND SUPPLEMENTARY SCHEDULE OF PERMITTED USES AND DIMENSIONAL REQUIREMENTS

N.P. - This means that accessory buildings are not permitted in any front yard.

NOTE A - This setback requirement for accessory buildings does not apply to storage facilities of not less than 80 square feet nor more than 120 square feet. Such accessory buildings are permitted within these yards, provided they are located no closer than five feet from any side or rear lot line.

NOTE B - In order to be permitted, accessory buildings must qualify for placement on the real property tax duplicate of the Hocking County Auditor.

NOTE C - Each development shall contain at a minimum 500 square feet of residential living area.

NOTE D - No setback is required if the accessory building is attached to another accessory building on an adjacent lot. If the accessory building is not attached by a common or joint wall, a 5 foot setback from the side lot line is required.

Official Schedule of Permitted Uses and Dimensional Requirements

Zoning District R-2

Permitted Uses	Permitted Uses	Conditional Uses	Page No.
SINGLE FAMILY DWELLING (1) PRIVATE GARAGE (1) ACCESSORY BUILDING (1) PLAYGROUND (2) ESSENTIAL SERVICES (16)		PUBLIC SERVICE FACILITY (2) COMMUNITY SWIMMING POOL (14) OUTDOOR TENNIS COURT (14)	44 47 48

Type of Dwelling	Min. Lot Area Per D.U.	Min. Lot Width	Min. Principal Bldg. Setbacks			Min. Accessory Bldg. Setbacks			Max. % Lot Coverage	Max. Bldg. Height		Min. Floor Area Per D.U.
			Front	Each Side	Rear	Front	Each Side	Rear		Principal Bldg.	Accessory Bldg.	
SINGLE FAMILY	20,000	100	50	15	50	NP	15 SEE NOTE A	15	15	35	20	1,200

SAMPLE B: MODEL ZONING CODE

R-2 LOW DENSITY SINGLE FAMILY DISTRICT

PURPOSE:

This district is established to provide for single-family residential uses at a density of 3.0 units per gross acre compatible with existing development in areas so defined.

USES:

Permitted Uses:

1. Single-family dwellings occupied by not more than one family and not more than one roomer or boarder.
2. Home occupation.
3. Accessory Building/Use

Conditionally Permitted Uses:

1. Public and parochial schools
2. Places of worship
3. Public libraries
4. Public and private parks and playgrounds
5. Cemeteries and golf courses
6. Day care center
7. Residential care facility, Class I
8. Swimming Pool

LOT REQUIREMENTS:

a) Minimum lot area: 12,500 sq.ft.

b) Minimum lot width: 80'

c) Minimum lot frontage: 45' on cul-de-sac or curve

d) Maximum lot coverage: 30%

YARD REQUIREMENTS:

a) Minimum front yard depth: 35'

b) Minimum side yard: two sideyards required which must each be 12' minimum. Each corner lot must have minimum sideyard 24' from, and parallel to, existing street line.

c) Minimum rear yard: 35' minimum. An accessory building shall only be located in the rear yard, and shall not be located closer than 5' from rear lot line, 3' from side lot line, 10' from principal building, and 20' from any side street line.

BUILDING REQUIREMENTS:

a) Main building: height limit of 35', floor area minimum 1,200 sq.ft.

b) Accessory building: height limit of 20', floor area maximum of 10% of lot area, and door opening height limit of 8'.

c) Maximum percent of lot coverage: 30%.

PARKING:

As regulated in Article 11.

SIGNS:

As regulated in Article 12.

SAMPLE C: CITY OF CINCINNATI

R-1A AND R-1 SINGLE-FAMILY LOW-DENSITY DISTRICT USE REGULATIONS

DIV. 1000. APPLICABILITY

All principal and accessory uses, both permitted and conditional, and planned unit development uses shall apply to both R-1A and R-1 classifications.

DIV. 1001. PRINCIPAL PERMITTED USES

shall be limited to those set forth in the sections hereunder:

SEC. 1001.1 RESIDENTIAL USES:

Sec. 1001.1(a) Detached single-family dwellings.

Sec. 1001.1(b) Detached single-family dwellings occupied as a home that provide room and board, personal care, habilitation services, and supervision in a family setting for not more than eight persons with developmental disabilities, inhabited by no other persons except houseparents and employees caring for the persons residing there with developmental disabilities, and is licensed and regulated by the Ohio Department of Mental Retardation and Developmental Disabilities.

SEC. 1001.2. INSTITUTIONAL USES:

Sec. 1001.2(a) Churches, Sunday schools and other places of worship.

Sec. 1001.2(b) Rectories and parsonages.

Sec. 1001.2(c) Monasteries, convents and similar group dwellings for members of religious orders provided that every building shall be no less than 30 feet distant from every abutting property line in an R district.

Sec. 1001.2(d) Elementary schools and high schools.

Sec. 1001.2(e) Group building projects as defined and regulated in Chapter 7, except as may be further regulated by the provisions of the applicable zoning district regulations.

SEC. 1001.3. AGRICULTURAL USES:

Sec. 1001.3(a) The growing of vegetables, fruits, flowers, shrubs and trees. The keeping of fowl or small animals, not primarily for gain. Any enclosure for such fowls and animals shall be no less than 20 feet distant from every abutting property line in an R district.

Sec. 1001.3(b) The keeping of horses, cows and other livestock, not primarily for gain and only within an enclosure, which shall be no less than 100 feet distant from every abutting property line in an R district.

SEC. 1001.4. RECREATIONAL USES:

Sec. 1001.4(a) Parks, playgrounds, playfields and community centers, publicly owned or operated, including such structures and concessions as are necessary for their operation.

Sec. 1001.4(b) Country clubs and golf courses on sites no less than 75 acres provided that:

(1) Every swimming pool, structure or parking area shall be no less than 200 feet from any abutting property used for a residential purpose.

(2) Pumps and filtration stations shall be no less than 50 feet from any abutting property used for a residential purpose.

SEC. 1001.5. PUBLIC UTILITY DISTRIBUTION SYSTEMS.

DIV. 1002. PRINCIPAL CONDITIONAL USES

shall be limited to those set forth in the sections hereunder, when authorized by the director of buildings and inspections, after a finding that they meet the requirements and conditions specified hereunder, provided further that any principal conditional use shall meet the requirements and conditions specified in Chapter 4, Section 402.2.

SEC. 1002.1. INSTITUTIONAL USES:

Sec. 1002.1(a) Non-profit educational research centers for advanced studies in the social sciences sponsored by one or more accredited colleges or universities provided that:

(1) The lot area occupied by such use shall be no less than 50,000 square feet.

(2) The maximum building coverage (ground floor area divided by lot area) shall not exceed 10 percent.

(3) Off-street parking areas shall be effectively screened by a screen-fence on each side which adjoins or faces and is within 10 feet of the property situated in an R or R-V district, unless said premises are developed with a non-residential use.

(4) No building shall be less than 30 feet distant from every abutting property line in an R district.

Sec. 1002.1(b) Private, non-profit and non-commercial clubs organized for and devoted to the promotion of educational, literary and artistic purposes, provided that:

(1) The lot area occupied by such use shall be no less than five acres.

(2) Every building shall be no less than 100 feet distant from every abutting property line in an "R" district.

(3) The use of dining facilities shall be limited to members and their guests only.

(4) Off-street parking areas shall be located no closer than 20 feet to any bounding property line and shall be effectively screened by a screen-fence on each side which adjoins or is within 100 feet of any other property situated in an "R" district.

SEC. 1002.2. RECREATIONAL USES:

Sec. 1002.2(a) Field houses, athletic fields and stadiums used in connection with non-profit educational institutions, provided that:

(1) Every principal building or structure or playing field shall be no less than 200 feet distant from every abutting property line in an R district.

Sec. 1002.2(b) Community centers, playfields, playgrounds, tennis courts or clubs, private and non-profit, provided that where such uses are not an integral part of a country club or similar development, the following conditions apply:

(1) Every principal building, tennis court or paved play area shall be no less than 100 feet distant from every abutting property line in an R district.

(2) The lot area shall be not less than two acres.

Sec. 1002.2(c) Community swimming pools or clubs, private and non-profit, provided that the following shall apply:

(1) The lot area shall be not less than five acres.

(2) Every pool, structure or paved play area shall be no less than 200 feet distant from any abutting property used for a residential purpose.

(3) Pumps and filtration stations shall be no less than 50 feet from any abutting property used for a residential purpose.

SEC. 1002.4. PUBLIC UTILITY STATIONS

DIV. 1003. ACCESSORY PERMITTED USES

shall be limited to those set forth in the sections hereunder:

SEC. 1003.1. Any accessory use customarily incidental to a principal permitted use.

SEC. 1003.2. ENUMERATED USES. The following accessory uses, whether incidental to a principal permitted or conditional use:

SEC. 1003.2(a) Living quarters for domestic servants, provided that the area of the lot occupied by the main residence shall be no less than 15,000 square feet.

SEC. 1003.2(b) The following signs:

(1) Non-illuminated real estate and nameplate signs erected as ground or wall signs, subject to the following limitations:

a) Real estate signs for other than subdivisions shall not exceed 12 square feet in area and shall, when not attached flat against a building wall, be set back at least 12 feet from all street lines, and not more than one such sign shall be permitted for any such street frontage.

b) Real estate signs for subdivisions shall exceed neither 250 square feet in area nor 10 square feet for each parcel within the subdivision. Such signs shall be set back at least 50 feet from all street lines, and not more than one such sign shall be permitted on any street frontage.

c) One nameplate sign, not exceeding one square foot in area, shall be permitted for each single-family dwelling.

(2) Non-illuminated or indirect-illuminated professional, instructional, identification, bulletin board and announcement signs, erected as ground or wall signs, subject to the following limitations:

a) One professional sign, not exceeding two square feet in area shall be permitted for each residential building where professional occupations are permitted.

b) Instructional signs shall not exceed two square feet in area.

c) One identification sign, not exceeding 12 square feet in area, shall be permitted for each non-residential use.

d) One bulletin board sign, not exceeding 12 square feet in area, shall be permitted for each non-residential use.

e) One announcement sign, not exceeding 12 square feet in area, shall be permitted for each non-residential use.

SEC. 1003.2(c) Office occupations conducted as home occupations, subject to the following limitations:

(1) Such office occupation shall be limited to remunerative personal service which is of value primarily for the knowledge, talent or skill which can be communicated on the premises in oral, written, fine-arts or graphic-arts form.

(2) Such office occupation shall be conducted entirely within a dwelling.

(3) No specified room shall be set aside exclusively for such use.

(4) No special outside entrance shall be provided or used in connection with the office occupation.

(5) No person other than a resident member of the family residing on the premises shall be directly or indirectly employed in such office occupation either on or off the premises, and the word "employed" shall include those persons who are employed as trainees.

(6) The total floor area devoted to such use shall not exceed 25 percent of the gross floor area of the dwelling unit, and not more than 25 percent of the gross floor area of any story shall be devoted to such use.

(7) There shall be no production, storage or sale of merchandise or stock in trade except the written, fine-arts or graphic-arts materials customarily incidental to office occupations as limited in paragraph (1) above.

(8) There shall be no instruction on the premises for more than two students or trainees at any one time.

(9) No display of goods or services pertaining to such office occupations shall be visible from outside the building.

(10) No mechanical or electrical equipment, other than that customarily used for household purposes, shall be permitted which has a capacity of over one horsepower or requires electrical service of over 30 amperes.

(11) Each office home occupation shall be limited to one non-illuminated identification sign, erected as a ground or wall sign, which shall have a sign area of not more than two square feet, notwithstanding the provisions of Section 1003.2(b)(2).

SEC. 1003.2(d) Accessory buildings, built with or after the construction of the principal building, including one private garage and uses customarily incident to any principal permitted uses, when located on the same lot and not involving the conduct of any business, subject to the following limitations:

(1) Garage space may be provided for four self-propelled vehicles, but such space may be increased provided that the area of lot shall contain not less than 1,500 square feet for each vehicle or trailer stored.

(2) Only one commercial vehicle, having no more than four load-bearing wheels, may be stored on the lot, and space for not more than one vehicle may be rented to persons not occupants of the premises.

SEC. 1003.2(e) Child day-care centers accessory to permitted or conditional institutional or recreational uses provided that no outdoor play area or play equipment shall be located or installed in any front yard.

SEC. 1003.2(f) Health Care clinics, diagnostic services, food service, or other similar facilities located in elementary or high schools for the care of the health, educational needs, nutrition, or welfare of the students attending the school in which the facility is located.

DIV. 1004. ACCESSORY CONDITIONAL USES

shall be limited to those set forth in the sections hereunder:

SEC. 1004.1. Any accessory use customarily incidental to a principal conditional use, when authorized by the director of buildings and inspections, provided that such accessory conditional use shall meet the requirements and conditions specified in Chapter 4, Section 402.2.

SEC. 1004.2. The following accessory uses, whether accessory to a principal permitted or conditional use, when authorized by the director of buildings and inspections, after a finding that such accessory uses meet the requirements and conditions specified hereunder, and provided further that any such accessory conditional use shall meet the requirements and conditions specified in Chapter 4, Section 402.2.

SEC. 1004.2(a) Accessory structure, other than buildings, in excess of six feet in height.

DIV. 1005. REQUIREMENTS

Uses of the R-1A and R-1 districts shall be subject to other requirements specified hereunder:

SEC. 1005.1. MAXIMUM HEIGHT, as specified in Chapter 5, table A.

SEC. 1005.2. MINIMUM LOT AREA, as specified in Chapter 5, table A.

SEC. 1005.3. MINIMUM LOT AREA PER DWELLING UNIT, as specified in Chapter 5, table A.

SEC. 1005.4. MINIMUM YARDS, as specified in Chapter 5, table A.

SEC. 1005.5. MINIMUM COURTS, as specified in Chapter 5, table A.

SEC. 1005.6. OFF-STREET PARKING AND LOADING, as specified in Chapter 6.

DIV. 1006. PLANNED UNIT DEVELOPMENTS

subject to the regulations as set forth in Chapter 9 and on sites of a minimum size as herein indicated.

SEC. 1006.1. Detached or attached single-family dwellings on sites three acres or more in size.

SEC. 1006.2. Historic building used for two-family and multi-family dwelling with no minimum site size required, but subject to Section 902.4.

SEC. 1006.3. All principal and conditional permitted and accessory uses set forth in Chapter 10 may be permitted in a planned unit development.

SAMPLE D: FRANKLIN COUNTY

SECTION 308 (R-4) SUBURBAN RESIDENTIAL DISTRICT REGULATIONS

308.02 PERMITTED USE. Land and buildings in the SUBURBAN RESIDENTIAL DISTRICT shall be used only for the following purposes:

308.021 Dwelling Structures. One-family dwelling structures.

308.022 Home Occupation. Home Occupation in association with a permitted dwelling, and in accordance with the provisions of SECTION 511, ARTICLE V.

308.023 Accessory Uses. Accessory buildings and uses in association with permitted dwellings as specified in SECTION 512, ARTICLE V.

308.024 Public School and Parks. Public school offering general educational courses similar to those ordinarily given in public schools and having no rooms regularly used for housing or sleeping of students, provided it occupies a lot of not less than five (5) acres.

308.026 Religious. Church or other place of worship provided it occupies a lot of not less than three (3) acres and there is one (1) acre or more per one hundred (100) seats or similar accommodations in the main assembly area.

308.03 CONDITIONAL USE. The following uses shall be allowed in the SUBURBAN RESIDENTIAL DISTRICT subject to approval in accordance with SECTION 815, ARTICLE VIII.

308.031 Dwelling Structures. Two-family dwelling structures.

Town House structures.

308.032 Child Care. Kindergarten or child care as an accessory use of a dwelling. There shall be an outdoor play area of two hundred (200) square feet or more per child. Such play area shall be arranged in accordance with the provisions of this district for accessory uses and shall be enclosed with a chain link fence or its equivalent in strength and protective character to a height of four (4) feet, but not more than six (6) feet.

308.033 Flexible Arrangement of Structures. Arrangement of structures in accordance with the provisions of SECTION 506, ARTICLE V.

308.04 DEVELOPMENT STANDARDS. In addition to the provisions of ARTICLE V, GENERAL DEVELOPMENT STANDARDS, the following standards for arrangement and development of land and buildings shall be required in the SUBURBAN RESIDENTIAL DISTRICT.

308.041 Lot Area and Coverage. For each dwelling unit there shall be a lot area not less than ten thousand (10,000) square feet, except where both central sewer and water are available. In such cases, the lot area may be reduced to eighty-five hundred (8,500) square feet per dwelling unit.

For all other Permitted Use and Conditional Use, the lot area shall be adequate to meet the sanitation requirements of the County Board of Health, but shall not be less than that prescribed for such use.

Only one (1) principal use shall be permitted on a lot, and such lot shall not be covered more than twenty percent (20%) by structure.

308.042 Lot Width. For a dwelling, there shall be a lot width of eighty (80) feet or more at the front line of the dwelling, and such lot shall have access to and abut on a public right-of-way for a distance of sixty (60) feet or more.

For a Conditional Use, the lot width shall be adequate to meet the development standards of the SUBURBAN RESIDENTIAL DISTRICT.

308.043 Side Yard. For dwellings or associated accessory buildings, there shall be a total of side yards of twenty (20) feet or more with a minimum of eight (8) feet on one (1) side.

For a Conditional Use, except dwellings and accessory structures thereto, there shall be a side yard on each side of a building twenty-five (25) feet or more.

308.044 Rear Yard. For main buildings, there shall be a rear yard of twenty percent (20%) or more of the lot depth, except that a rear yard of more than fifty (50) feet shall not be required.

ARTICLE IV. ZONING DISTRICT REGULATIONS

Section 04000. Introduction

The zoning district regulations in this article are intended to insure that the basic character of development for each of the zoning districts, as set forth in Article III, is achieved. These regulations help to make one district different from another by regulating the land uses and intensity of development permitted. This article provides the basic parameters within which development can take place on a particular piece of property based on its zoning district classification. Once this is determined, other sections of this ordinance provide the detailed standards for development of a specific use on a site. In no case, however, may uses be developed which are not permitted in Section 04101, nor may development take place at a level of intensity greater than that permitted in Section 04301 for the district in which the site is located.

Section 04100. Uses Permitted by Right, Uses Permitted with Conditional or Special Use Permits and Uses Not Permitted

The purpose of this section is to indicate which land uses may locate in each zoning district and which uses may not locate therein. A further distinction is made between uses which may locate in a given district only upon obtaining a conditional or special use permit to do so.

Except as otherwise provided by law or in this ordinance, no building, structure, or land shall be used or occupied following the adoption of this ordinance except in the zoning districts indicated and for the purposes permitted in this section. The land use categories permitted in each district are specified by the tables in Section 04101 and are specifically listed and defined in Sections 04201 through 04209. Permitted accessory uses are listed in Section 09300 for non-residential uses and Section 08500 for residential uses. Permitted temporary uses are listed in Section 09400.

A. A use listed in Section 04101 in any district denoted by the letter "P" is a use permitted by right, provided that all requirements of other City ordinances and this ordinance have been met and provided that a zoning certificate has been issued in accordance with Article XVII.

B. A use listed in Section 04101 may be permitted as a conditional use in any district denoted by the letter "C", provided that the requirements of Article IX and Section 17502 have been met.

C. A use listed in Section 04101 may be permitted as a special use in any district denoted by the letter "S" provided that the requirements of Article IX have been met.

D. A use listed in Section 04101 is not permitted in any district denoted by the letter "N".

E. Uses not listed in Section 04101 are not permitted in any district except pursuant to Article XVII, which provides for interpretation of uses, or Article XVI, which provides for non-conformities.

Although a use may be indicated as permitted or conditionally or specially permitted in a particular district, it does not follow that such a use is permitted or permissible on every parcel in such district. No use is permitted or permissible on a parcel unless it can be located thereon in full compliance with all of the performance standards and other regulations of this ordinance applicable to the specific use and parcel in question.

Section 04101. Table of Permitted Uses

The tables of permitted uses can be found on the following pages.

KEY
P - Permitted Use
C - Conditionally Permitted Use
S - Special Use
N - Not Permitted

Section 04101. Table of Permitted Uses

LAND USE CATEGORIES	ZONING DISTRICTS: Residential Conservation	Residential Development-1	Residential Development-2	Open Space Development	Limited Development	General Development	Economic Development	Community Center	Research Park
04204. INSTITUTIONAL RECREATION & COMMUNITY CENTERS (Con't.)								*	*
J. Public Indoor Recreation & Community Centers	S	S	S	S	S	S	S	S	S
K. Membership Sports & Recreation Clubs	C	S	S	S	S	S	S**	S	S
L. Outdoor Recreation	S	S	S	S	S	S	S	S	S
04205. BUSINESS & PROFESSIONAL OFFICES					***			*	*
A. Business, Professional & Administrative Offices	N	N	N	N	P	P	S	P	P
B. Business & Professional Association	N	N	N	N	P	P	S	P	P
C. Medical Offices	N	N	N	S	P	P	S	P	P
04206. RETAIL COMMERCIAL & SERVICE USES					***			*	*
A. Speciality Retail	N	N	N	N	P	P	N	P	N
B. Speciality Food Stores	N	N	N	N	P	P	N	P	N
C. Home Furnishings, Home Improvements & Equipment	N	N	N	N	N	P	N	P	N
D. Nurseries & Garden Supplies	N	N	N	N	P	P	N	P	N
E. General Merchandise & Supermarkets	N	N	N	N	N	P	N	P	N

NOTES:

* All uses permitted in the Community Center District and Research Park District are subject to the additional provisions set forth in Section 09210.

** Certain uses permitted in the Economic Development District are subject to the additional provisions set forth in Section 09209.

*** All retail commercial and service uses and all office uses in the Limited Development District are subject to the additional provisions set forth in Section 09208.

KEY
P - Permitted Use
C - Conditionally Permitted Use
S - Special Use
N - Not Permitted

Section 04101. Table of Permitted Uses

LAND USE CATEGORIES	ZONING DISTRICTS: Residential Conservation	Residential Development-1	Residential Development-2	Open Space Development	Limited Development	General Development	Economic Development	Community Center	Research Park
04206. RETAIL COMMERCIAL & SERVICE USES (Con't.)					***			*	*
F. Personal Services	N	N	N	N	P	P	N	P	P
G. Business and Cleaning Services	N	N	N	N	P	P	P	P	P
H. Commercial Schools	N	N	N	N	P	P	P	P	P
I. Studios	N	N	N	N	P	P	P	P	N
J. Financial Establishments	N	N	N	N	S	S	S	S	S
K. Restaurants, Standard	N	N	N	N	P	P	N	P	P
L. Commercial Centers	N	N	N	N	N	P	N	P	N
M. Animal Hospitals	N	N	N	N	N	S	S	S	P
N. Funeral Homes	N	N	N	N	S	S	N	S	N
04207. ROAD SERVICE & COMMERCIAL ENTERTAINMENT								*	*
A. Convenience Food Stores & Drive-In Stores	N	N	N	N	N	S	N	N	N
B. Restaurants, Fast Food	N	N	N	N	N	S	N	S	S
C. Taverns & Bars	N	N	N	N	N	S	N	S	S
D. Fraternal & Social Associations	N	N	N	N	N	S	N	N	N
E. Motels & Hotels	N	N	N	N	N	S	N	S	S

NOTES:

* All uses permitted in the Community Center District and Research Park District are subject to the additional provisions set forth in Section 09210.

*** All retail commercial and service uses in the Limited Development District are subject to the additional provisions set forth in Section 09208.

KEY
P - Permitted Use
C - Conditionally Permitted Use
S - Special Use
N - Not Permitted

Section 04101. Table of Permitted Uses

LAND USE CATEGORIES	ZONING DISTRICTS								
	Residential Conservation	Residential Development-1	Residential Development-2	Open Space Development	Limited Development	General Development	Economic Development	Community Center	Research Park
04207. ROAD SERVICE & COMMERCIAL ENTERTAINMENT (Con't.)								*	*
F. Commercial Entertainment, Indoor	N	N	N	N	N	S	N	N	N
G. Commercial Recreation, Indoor	N	N	N	N	N	S	S	S	S
H. Theaters and Concert Halls	N	N	N	N	N	S	N	S	S
I. Meeting and Banquet Halls	N	N	N	N	N	S	S	S	S
J. Commercial Entertainment, Outdoor	N	N	N	N	N	S	N	N	N
K. Vehicle Sales	N	N	N	N	N	S	S	N	N
L. Automobile Service Stations	N	N	N	N	N	S	N	S	S
M. Automobile Repair & Body Shops	N	N	N	N	N	S	S	N	N
N. Automobile Washing	N	N	N	N	N	S	N	N	N
O. Automobile Accessories	N	N	N	N	N	S	N	N	N
P. Vehicle Storage	C	C	C	S	S	S	S	S	S
04208. LIGHT INDUSTRIAL USES								*	*
A. Light Manufacturing	N	N	N	N	N	S	S	N	S
B. Construction Trades	N	N	N	N	N	S	S	N	N

NOTES:
* All uses permitted in the Community District and Research Park District are subject to the additional provisions set forth in Section 09210.

KEY
P - Permitted Use
C - Conditionally Permitted Use
S - Special Use
N - Not Permitted

Section 04101. Table of Permitted Uses

LAND USE CATEGORIES	ZONING DISTRICTS								
	Residential Conservation	Residential Development-1	Residential Development-2	Open Space Development	Limited Development	General Development	Economic Development	Community Center	Research Park
04208. LIGHT INDUSTRIAL USES (Con't.)								*	*
C. Industrial Crafts	N	N	N	N	S***	S	S	S	S
D. Lumberyards & Building Materials	N	N	N	N	N	S	S	N	N
E. Laundries & Dry Cleaning Plants	N	N	N	N	N	S	S	N	N
F. Printing & Publishing	N	N	N	N	N	S	S	N	N
G. Warehouses & Mini-Warehouses	N	N	N	N	N	S	S	N	S
H. Wholesaling	N	N	N	N	N	S	S	N	S
I. Recycling Centers	N	N	N	N	N	S	S	N	N
04209. HEAVY INDUSTRIAL, TRANSPORTATION & UTILITIES								*	*
A. Heavy Industry	N	N	N	N	N	N	C	N	N
B. Heavy Equipment Sales & Service	N	N	N	N	N	N	C	N	N
C. Transportation Terminals	N	N	N	N	N	S	S	N	S
D. Public Transit Stations	C	C	C	C	S	S	S	S	S
E. Public Service Yards	N	N	N	N	N	S	S	N	N
F. Public Utilities	C	C	C	C	S	S	S	S	S

NOTES:

* All uses permitted in the Community District and the Research Park District are subject to the additional provisions set forth in Section 09210.

*** Industrial uses permitted in the Limited Development District are subject to the additional provisions set forth in Section 09208.

ARTICLE 9

SUPPLEMENTARY DISTRICT REGULATIONS

900 **General.**

The purpose of supplementary district regulations is to set specific conditions for various uses, classifications of uses, or areas wherein problems may occur, in order to alleviate or proclude such problems, and to promote the harmonious exercise of property rights without conflict.

901 **Conversions of Dwellings to More Than One Unit.**

A residence may not be converted to accommodate an increased number of dwelling units unless all of the following conditions are met:

1. The conversion is in compliance with all other local codes and ordinances (resolutions), and any applicable State or Federal regulations;

2. The district within which the residence is located is so regulated as to allow such an increase in dwelling units;

3. The yard dimensions still meet the yard dimensions required by the zoning regulations for new structures in that district;

4. The lot area per family equals the lot area requirements for new structures in that district;

5. The floor area per dwelling unit is not reduced to less than that which is required for new construction in that district;

6. The conversion is in compliance with all other relevant codes and ordinances (resolutions).

902 **Principal Building Per Lot.**

No more than one principal building or structure may be constructed upon any one lot for the purposes of this Ordinance (Resolution). Rear dwellings shall be prohibited and shall be considered non-conforming uses subject to the requirements of Article 3 of this Ordinance (Resolution).

903 **Reduction of Area or Space.**

No lot, yard, parking area, or other space shall be reduced in area or dimension if such reduction has the effect of making the lot, yard, parking area, or other space less than the minimum required by this Ordinance (Resolution). Furthermore, any lot, yard, parking area, or other space which is already less than the required minimum shall not be reduced further. However, nothing in this section shall be interpreted to limit the power of the Board of Zoning Appeals in the granting of variances under this Ordinance (Resolution).

904 **Construction in Easements.**

Easements for installation, operation and maintenance of utilities and drainage facilities are reserved as shown on each plat when recorded or otherwise established. Within these easements, no permanent building or structure shall be placed or permitted which may damage or which may interfere with the installation, operation, and maintenance of such utilities or which may change the normal direction of flow of drainage channels within the easement. The easement area of each lot, and any improvements within it, shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or a utility is responsible.

905 **Parking and Storage of Vehicles and Trailers.**

No commercial vehicles, to include commercial tractors, automobiles, trucks, buses, house trailers, semi-trailers, shall be parked or stored on any property within a residential zoning district other than in a completely enclosed building, except those commercial vehicles conveying the necessary tools, materials, and equipment to a premises where labor using such tools, materials, and equipment is to be performed during the actual time of parking. No automotive vehicles or trailers of any type without current license plates shall be parked or stored on any residential property other than in a completely enclosed building. A maximum of one boat or one unoccupied recreational vehicle may be stored in the rear yard or any residentially zoned property if it has a current license, meets the requirements of this Ordinance (Resolution) for accessory structures, and is screened according to the requirements of this Ordinance (Resolution).

906 **Required Refuse Collection Areas.**

The refuse collection areas provided by all commercial, industrial, and multifamily residential uses for the collection of trash, garbage, and other refuse shall be enclosed on three sides by a solid wall or fence of at least four (4) feet in height, unless within an enclosed building or structure. Provisions shall be made for regular and adequate vehicular access to such areas for collection purposes, as determined necessary by the Zoning Administrator. In addition, the following requirements shall be met:

1. The storage of hazardous or toxic materials or wastes shall not be permitted without documented approval of the Ohio Environmental Protection Agency.

2. Materials or wastes which might cause fumes or dust or otherwise constitute a fire hazard, or which may attract rodents or insects, shall be stored only in closed containers constructed of impervious materials.

3. Storage areas in residential districts shall utilize such additional screening as required in this Ordinance (Resolution).

907 **Junk.**

The accumulation or storage of junk, junk vehicles, disabled or inoperative machinery or equipment, vehicles or machinery parts, rags, or any other disgarded objects or debris defined as junk in the Ohio Revised Code shall be prohibited, outside of an approved junk yard, in order to protect residents from conditions conducive to the infestation and breeding of vermin, insects, and rodents.

910 **Supplemental Yard and Height Regulations.**

In addition to the regulations specified in Article 8 and in other sections of this Ordinance (Resolution), Sections 911 through 916 inclusive shall be used for clarification and interpretation.

911 **Setback Requirements for Buildings on Corner Lots.**

The principal building and its accessory structures located on any corner lot shall be required to have the same setback distance from all street right-of-way lines as required for the front yard in the district in which such structures are located.

912 **Fence and Wall Restrictions in Front Yards.**

In any required front yard, no fence or wall shall be permitted which materially impedes vision across such yard above the height of two and a half (2 1/2) feet, and no hedge or other vegetation shall be permitted which materially impedes vision across such yard between the height of two and a half (2 1/2) feet and ten (10) feet.

913 **Yard Requirements for Multi-Family Dwellings.**

Multi-family dwellings shall be considered as one (1) building for the purpose of determining front, side, and rear yard requirements. The entire group as a unit shall require one (1) front, one (1) rear, and two (2) side yards as specified for dwellings in the appropriate district. Each individual building shall meet all yard requirements for the appropriate district as though it were on an individual lot.

914 **Side and Rear Yard Requirements for Nonresidential Uses Abutting Residential Districts.**

Nonresidential buildings or uses shall not be located nor conducted closer than forty (40) feet to any lot line of a residential district, except that the minimum yard requirements may be reduced to fifty (50) per cent of the requirement if acceptable landscaping or screening approved by the Zoning Administrator is provided. Such screening shall be a masonry wall or solid fence between four (4) and eight (8) feet in height maintained in good condition and free of all advertising or other signs. Landscaping provided in lieu of such wall or fence shall consist of a strip of land not less than twenty (20) feet in width planted with an evergreen hedge or dense planting of evergreen shrubs not less than four (4) feet in height at the time of planting. Neither type of screening shall obscure traffic visibility as required by Section 917 of this Ordinance (Resolution).

915 **Exceptions to Height Regulations.**

The height limitations contained in the Official Schedule of District Regulations do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy except where the height of such structures will constitute a hazard to the safe landing and take-off of aircraft at an established airport.

916 **Architectural Projections.**

Open structures such as porches, canopies, balconies, platforms, carports, covered patios, and similar architectural projections shall be considered parts of the building to which attached and shall not project into the required minimum front, side, or rear yard.

917 **Visibility at Intersections.**

On a corner lot at the intersection of two streets in any district, nothing shall be installed, erected, placed, planted, or allowed to grow in such manner as to impede vision materially between a height of two and one half (2 1/2) feet and ten (10) feet above the center line grades of the intersecting streets in the area bounded by the right-of-way lines of such corner lot and a line joining points along said street lines fifty (50) feet from the point of intersection. On a corner lot at the intersection of two alleys, or at the intersection of an alley and a street, within any district, nothing shall be installed, erected, placed, planted, or allowed to grow in such manner as to impede vision materially between a height of two and one half (2 1/2) feet and ten (10) feet above the center line grades of the intersecting alleys, or of the intersecting alley and street, in the area bounded by the right-of-way lines of such corner lot and a line joining points along said alley lines, or alley and street lines, twenty-five (25) feet from the point of intersection.

920 **Objectionable, Noxious, or Dangerous Uses, Practices, or Conditions.**

No land or building in any district shall be occupied or used in any manner which creates or contributes to the existence of conditions which are dangerous, injurious, harmful, noxious, or objectionable, or which may otherwise adversely affect surrounding areas or adjoining premises, except that any use permitted by this Ordinance (Resolution) may be undertaken or maintained if acceptable measures and safeguards to reduce any dangerous or objectionable conditions to acceptable limits, as established in this Section, are properly exercised. Specifically, the occupation or use of any land or building in any district shall be in violation of this Ordinance (Resolution) if one or more of the following conditions is found to exist at any time:

1. The use or storage of flammable or explosive materials is not adequately protected by fire-fighting and fire-protection equipment or by such safety devices as are normally required for such activities;

2. Activities involving the use and storage of flammable and explosive materials are not removed from adjacent facilities or activities to a distance compatible with the potential danger involved;

3. Radioactivity or air pollution is present in violation of the regulations of the Ohio Environmental Protection Agency;

4. Hazardous wastes are present in violation of the regulations of the Ohio Environmental Protection Agency;

5. Objectionable noise as determined by the Zoning Administrator due to volume, frequency or beat is present;

6. Vibration discernible by the Zoning Administrator without instruments is present on an adjoining lot or property;

7. Direct or reflected glare is present which is visible from any street or from any property not within a manufacturing district;

8. Erosion caused by wind or water is carrying objectionable substances onto any adjacent lot or property;

9. Water pollution or contamination is present in violation of the regulation of the Ohio Environmental Protection Agency.

921 **Assurance Requirements and Plans.**

Prior to the issuance of a zoning permit, the Zoning Administrator may require the submission of written assurances and plans indicating the manner in which dangerous and objectionable aspects or elements of processes or operations entailed in certain uses or occupations are to be eliminated or reduced to acceptable limits and tolerances.

922 **Enforcement Provisions.**

Any occupancy, use, conditions or circumstances existing in violation of Section 920 and 921 of this Ordinance (Resolution) shall constitute a violation of this Ordinance (Resolution) and be subject to the enforcement procedures contained in Sections 1470-1473 of this Ordinance (Resolution).

930 **Temporary Uses.**

The following regulations are necessary to govern certain uses which are of a non-permanent nature. For such uses requiring temporary zoning permits, at least seven (7) days before the instigation of such use an application for a zoning permit shall be made to the Zoning Administrator, which shall contain a graphic description of the property to be used, a description of the proposed use, and a site plan, with sufficient information to determine the yard, setback, parking, and sanitary facility requirements for the proposed temporary use.

The following uses are deemed to be temporary uses and shall be subject to the specified regulations and time limits which follow, as well as the regulations of any district in which they are located:

1. Real estate sales offices, which shall contain no living accommodations, shall be permitted within any district for any new subdivision for a period of one year, except that two (2) six-month extensions may be granted if conditions warrant. Such offices shall be removed upon the completion of the sales of the lots therein, or upon the expiration of the zoning permit, whichever occurs first.

2. Temporary buildings, offices, and equipment and storage facilities required in conjunction with construction activity may be permitted within any district for a period of one year, except that six-month extensions may be granted if construction is substantially underway. Such uses shall be removed immediately upon completion of the construction, or upon expiration of the zoning permit, whichever occurs first.

3. Temporary sales and services may be permitted within parking areas within any commercial district. A zoning permit valid for a period not to exceed four (4) consecutive days shall only be issued three (3) times within any twelve-month period to any individual or organization. The application for the temporary zoning permit shall be accompanied by written permission of the property owners, and shall be prominently displayed at the site. The Zoning Administrator shall not issue a permit for such temporary use if he determines that it encroaches upon more than twenty-five (25) percent of the required parking area.

4. Temporary retail sales and services, such as sales of plants, flowers, arts and crafts, farm produce, or similar items on lots other than parking lots, including any lot on which an existing business is operating or on which a business is vacated, may be permitted for any for-profit individuals or organizations in any commercial district. A zoning permit valid for a period not to exceed two (2) consecutive days shall only be issued three (3) separate times for any particular lot within any twelve-month period, and not more than one permit may be issued at the same time for any lot. The applicant must submit a current vendor's license or transient vendor's license, and a written statement from the property owner giving his permission for such use. This section shall not be interpreted to prohibit any such use in any case where a valid covenant or deed restriction specifically authorizes such use. In any case, the zoning permit shall be prominently displayed at the site.

5. Garage sales, which for the purposes of this section shall include yard sales, barn sales, and similar activities, may be permitted within any district in which dwellings are permitted. Any individual or family may conduct one (1) such sale within any twelve-month period upon the property at which he or they reside for a period not to exceed two (2) consecutive days without obtaining a zoning permit, so long as the provisions of this Ordinance (Resolution) pertaining to signs and parking are observed. Garage sale permits shall only be issued to groups of families, neighborhood organizations, and community organizations two (2) times within any twelve-month period and shall not exceed a period of three (3) consecutive days, so long as the provisions of this Ordinance (Resolution) pertaining to signs and parking are observed.

940 **Screening.**

Screening or buffering in compliance with the provisions of this Section shall be provided for any permitted or conditionally permitted non-residential uses which abut any residential district, in addition to setback and yard requirements provided elsewhere in the Ordinance (Resolution). Applicants for a zoning permit may request a variance from yard or setback requirements in conjunction with a plan for screening, which the Board of Zoning Appeals may consider by weighing the relationship of the proposed screening plan and the requested dimensional variance with respect to their joint impact upon neighboring properties. Such requested variance for a conditionally permitted use shall be incorporated in the conditional use procedure specified in Article 5 of this Ordinance (Resolution). The following provisions shall apply with respect to screening.

1. Screening shall be provided for one or more of the following purposes:

   a. A visual barrier to partially or completely obstruct the view of structures or activities.

   b. An acoustic screen to aid in absorbing or deflecting noise.

   c. A physical barrier to contain debris and litter.

2. Screening may consist of one of the following, or a combination of two or more, as determined by the Zoning Administrator or Board of Zoning Appeals, in the event of an appeal, variance, or conditional use:

   a. A solid masonry wall;

   b. A solidly constructed decorative fence;

   c. A louvered fence;

   d. A dense vegetative plantings;

   e. A landscaped mounding.

3. Height of screening shall be in accordance with the following:

   a. Visual screening walls, fences, plantings, or mounds shall be a minimum of 5 1/2 feet high in order to accomplish the desired screening effect, except in required front yards where maximum height shall be not greater than 2 1/2 feet. Plantings shall be a minimum of 4 feet in height at the time of planting.

   b. A dense vegetative planting with a minimum height of 4 feet at planting and a mature height of at least 5 1/2 feet or greater, or a solidly constructed decorative fence, shall be permanently maintained along the mutual boundary of an accessory parking area and adjacent land zoned for residential uses, except for the portion of such boundary located within a required front yard.

4. Screening for purposes of absorbing or deflecting noise shall have a depth of at least 15 feet of dense planting or a solid masonry wall in combination with decorative plantings. The height shall be adequate to absorb noise as determined by the Zoning Administrator in relation to the nature of the use.

5. Whenever required screening is adjacent to parking areas or driveways, such screening shall be protected by bumper blocks, posts, or curbing to avoid damage by vehicles.

6. All screening shall be trimmed, maintained in good condition, and free of advertising or other signs, except for directional signs and other signs for the efficient flow of vehicles.

ARTICLE 10

SPECIAL REGULATIONS

1000 GENERAL

It is the purpose of these special regulations to promote the public health, safety, and welfare and to establish regulations affecting uses and practices which, were they to be established and maintained without any guidance or restriction or control, tend to result in dangerous situations threatening the safety of citizens, to contribute to circumstances undermining the morals of the youth of the community, or to generate conflicts in uses or practices upsetting the harmony of the community and impinging upon the property rights of others.

1000.10 REGULATION OF SATELLITE DISH ANTENNAS

Sections 1000.10 to 1000.16 inclusive shall apply to the location and construction of dish-type satellite signal receiving antennas as herein defined.

1000.11 Purpose

It is the purpose of Sections 1000.10 to 1000.16 inclusive to regulate the location and construction of dish-type satellite signal-receiving antennas within the city (county, township, village) in order to protect the public health, safety, and welfare of the residents, particularly with respect to the maintenance of utility easements and fire safety accesses, the prevention of the accumulation of noxious weeds and debris, the safety considerations associated with windloads, and the reasonable accommodation of the aesthetic concerns of neighboring property owners.

1000.12 Definitions

The following definitions shall apply in the interpretation of this Ordinance (Resolution):

"Dish" shall mean that part of a satellite signal-receiving antenna which is shaped like a saucer or dish, whether it is spherical, parabolical, or similar in shape.

"Dish-type satellite signal-receiving antennas," to include earth stations or ground stations, whether functioning as part of a basic service system, direct broadcast satellite system, or multi-point distribution service system, shall mean one, or a combination of two or more, of the following:

a. A signal-receiving device such as a dish antenna whose purpose is to receive communications or signals from earth-orbiting satellites or similar sources.

b. A low-noise amplifier (LNA) whose purpose is to boost, magnify, store, transfer or transmit signals.

c. A coaxial cable, whose purpose is to convey or transmit signals to a receiver.

"Receiver" shall mean the apparatus whose purpose is to obtain a signal from a cable or like source and transform it to a television signal.

1000.13 Zoning Permit Required

No person, firm or corporation shall undertake the construction, erection or installation of any satellite dish without a zoning permit issued in accordance with the provisions of this Ordinance (Resolution). In addition to the requirements of Article 14 of this Ordinance (Resolution), the application for such permit shall include the following:

1. a description of the type of earth station proposed;
2. a plot plan of the lot, premises, or parcel of land showing the location of the proposed earth station and all other buildings thereon;
3. plans depicting the specifications and elevations of the proposed location, to include satisfactory screening and landscaping for ground-mounted structures;
4. details of the method of assembly and construction of the proposed earth station;
5. a fee as required according to Section 1351 for the review of plans and specifications and the inspection of construction.

1000.14 Ground-Mounted Satellite Dish Antennas

Ground-mounted satellite dish antennas are considered as accessory structures, and are permitted as accessory uses in (indicate districts). In addition to the provisions of this Ordinance (Resolution) pertaining to accessory structures, the following provisions shall apply to ground-mounted satellite dishes:

1. The maximum diameter of any ground-mounted satellite dish shall not exceed twelve (12) feet;
2. The maximum height of any ground-mounted satellite dish shall not exceed fifteen (15) feet above the finished grade;
3. The "Dish" portion of the apparatus shall have a surface of open mesh construction, and shall not have a solid surface;
4. The satellite dish apparatus shall be painted a color which complements its environment, and shall bear no advertisement, lettering, picture, or visual image;
5. The apparatus shall not be located in a side yard or a front yard;
6. The site of the apparatus shall be screened with shrubbery and/or landscaped as proposed in the zoning permit application;
7. The apparatus shall be mounted upon a solid concrete slab, and shall be constructed in such manner that it will withstand wind forces of up to 75 miles per hour;
8. Only metal supports of galvanized construction shall be used;

9. Any guy wires attached to a satellite dish apparatus shall be enclosed by an approved fence.
10. Any driving motor shall be limited to 110 volt maximum power and shall be encased in a protective guard;
11. All wiring between the apparatus and any other structure shall be placed underground in approved conduit;
12. The apparatus shall be bonded to an approved eight (8) foot grounding rod.

1000.15 Roof-Mounted Satellite Dish Antennas

Roof-mounted satellite dish antennas are considered as accessory structures, and are permitted as accessory uses in all districts. In addition to the provisions of this Ordinance (Resolution) pertaining to accessory structures, the following provisions shall apply to roof-mounted satellite dishes:

1. The maximum diameter of any roof-mounted satellite dish shall not exceed three (3) feet;
2. The height of any roof-mounted satellite dish shall not exceed the roof height of the building upon which it is mounted by more than four (4) feet;
3. The "Dish" portion of the apparatus shall have a surface of open mesh construction, and shall not have a solid surface;
4. The apparatus shall be painted a color which complements its environment, and shall bear no advertisement, picture, lettering or visual image;
5. All wiring and grounding of the apparatus shall be in accordance with (specify electrical code);
6. The apparatus, its mounting and all supporting devices shall be constructed and erected in accordance with (specify building code) directly upon the roof of the principal building, and shall not be mounted upon a spire, tower, turret, chimney, pole, or any appurtenances thereto attached;
7. The satellite dish apparatus shall be so designed and installed as to withstand wind forces up to 75 miles per hour.

1000.16 Variances On Locational Characteristics

An applicant may request a variance from the accessory building requirements and the required height restrictions in compliance with the procedures of Article 4 of this Ordinance (Resolution). In addition to all requirements of these sections, the applicant shall submit clear and convincing evidence that the requested variance is necessary in order for the satellite dish antenna to have a direct line of sight or unobstructed view to the satellite. In any case where this provision applies, the variance granted by the Board of Zoning Appeals shall be the minimum variance required to achieve the necessary direct line of sight to assure that the antenna can properly function.

1000.20 REGULATION OF AMUSEMENT ARCADES

The following regulations shall apply to amusement arcades as herein defined.

1000.21 Purpose

The purpose of Sections 1000.20 to 1000.29 inclusive of this Ordinance (Resolution) is to promote the public health, safety and welfare by regulating amusement arcades where mechanically or electronically operated amusement devices are kept, operated, or maintained. It is further the intent of these sections to coordinate the provisions of this Ordinance (Resolution) with the requirements of (indicate local code) governing the licensing and regulation of mechanical amusement devices in such a manner that, in the event of any conflict between the respective regulations, the more restrictive requirement or the more severe penalty shall prevail.

1000.22 Definition

The following definitions shall apply in the interpretation of this Ordinance (Resolution):

"Amusement Arcade" means a place of business within a building or any part of a building having more than five (5) mechanical or electronically operated amusement devices which are used for the purpose of public entertainment through the operation, use, or play of any table game or device commonly known as an electronic game which is operated by placing therein any coin, plate, disc, slug, key, or token of value by payment of a fee.

"Mechanical or Electronically Operated Amusement Device" means any machine, device or instrument which, by the payment of a fee or other things of value, or by the insertion of a coin, plate, disc, slug, key or token, operates or may be operated as a game, contest or amusement, and which contains no automatic pay-off device for the return of money, coins, tokens or merchandise or check redeemable in money or anything of value. Mechanical or electronically operated amusement device includes, but is not limited to, devices such as mechanical baseball, mechanical football, pinball machines, any table game or device commonly known as an electronic game, and other similar types of devices; provided, however, that this definition is not intended to, nor shall it be construed to, include merchandise vending machines or coin operated mechanical or electrical musical instruments or devices.

"Exhibitor" means any person owning and exhibiting or contracting or permitting any mechanical or electrically operated amusement device to be installed, used and exhibited in his own place of business, irrespective of the ownership of such device.

1000.23 Conditional Use Permit Required

No amusement arcade shall be established, operated or maintained in any place of business or on any premises unless authorized by the issuance of a conditional use permit in accordance with the provisions of Article 5 of this Ordinance (Resolution). In addition to said provisions, amusement arcades shall comply with the following conditional use criteria:

1. Amusement arcades shall comply with the district regulations applicable to all properties in any zoning district in which they are located.
2. Amusement arcades shall have an adult who is 18 years of age or over on the premises and supervising the amusement arcade at all times during its hours of operation.
3. Amusement arcades shall have necessary security personnel as required by the appropriate law enforcement agency to police the interior and exterior of the premises.
4. The interior of the amusement arcades shall provide a minimum area per coin-operated amusement device equal to the size of the device plus two (2) feet of area on each side plus an area of four (4) feet in front of the device.
5. Prior to the issuance of a conditional use permit the applicant shall provide evidence that the structure meets the minimum requirements of the appropriate electrical and fire codes.
6. If the place of business or premises for which an amusement arcade is proposed is a free standing building, the application for the conditional use permit shall include an approvable exterior lighting plan.
7. In establishments which serve alcoholic beverages, any area containing amusement devices shall be visually separated from that portion or portions of the establishment wherein alcoholic beverages are served or sold for carrying out of the premises.
8. No amusement arcade may be established, operated or maintained in any place of business or on any premises which is within 500 feet of any adult entertainment business.
9. The application for the conditional use permit shall be accompanied by a copy of the applicant's license to operate and exhibit amusement devices, and a notarized statement that the applicant shall not permit any person 14 years of age or younger to operate any devices on the premises before 4:00 p.m. on days when school is in session.

1000.24 Zoning Of Amusement Arcades

Amusement arcades shall be conditionally permitted uses only in the following districts: (indicate districts).

1000.25 Maintenance Of A Nuisance Prohibited

It shall be the obligation of the exhibitor of an amusement arcade to maintain peace and quiet and order in and about the premises. Failure to do so shall constitute a nuisance, which shall be a minor misdemeanor.

1000.26 Restricted Access To Certain Minors

No amusement arcade exhibitor shall permit, on days when school is in session, any person 14 years of age or younger to operate any mechanical or electrically operated amusement device or to be or remain in an amusement arcade before 4:00 P.M. This provision does not apply to juke boxes, mechanical musical instruments, or other mechanical amusement devices designed to be ridden, such as mechanical horses, automobiles, and carrousels. Violation of this provision shall be a minor misdemeanor.

1000.27 Complaints Regarding Amusement Arcades

Any resident of the city (village, township, county) may submit a written notice of complaint regarding the operation of any amusement arcade to the Zoning Administrator. The notice of complaint shall include the name and address of the complainant, the address of the location of the amusement arcade, and the specific reasons why the individual is complaining.

If the Zoning Administrator determines, after interviewing both the complainant and the amusement arcade exhibitor, that the specific reasons in the complaint appear to be proper grounds for suspension or revocation of the conditional use permit, he shall refer the matter to the Board of Zoning Appeals.

1000.28 Revocation Of Conditional Use Permit

The Zoning Administrator shall revoke the conditional use permit for any amusement arcade in the event that the license to operate such amusement arcade is revoked. In addition, the Zoning Administrator shall revoke the conditional use permit for any amusement arcade if so determined pursuant to the action of the Board of Zoning Appeals, or to the final decision from appeal to the city council (village council, township trustees, county commissioners), according to the provisions of 1000.29.

1000.29 Procedure For Revocation

The Zoning Administrator shall notify in writing the Board of Zoning Appeals whenever he has reason to believe that the operation of an amusement arcade has resulted in a violation of any provision of this Ordinance (Resolution). Within (ten) 10 days from said notification the Board of Zoning Appeals shall hold a public hearing to determine whether the conditional use permit should be revoked. Notice of this hearing shall be served on the amusement arcade exhibitor and, if the Zoning Administrator referral to the Board of Zoning Appeals originated from a complaint by any resident, similar notice shall be served on the complainant at least (five) 5 days before the hearing. The Board of Zoning Appeals may also give such other notice as it deems appropriate, including notice to property owners and notice in a newspaper of general circulation. The Board of Zoning Appeals shall make a decision within (five) 5 days after the hearing and shall notify the amusement arcade exhibitor and, if applicable, the complainant. The decision of the Board of Zoning Appeals may be appealed to City Council (village council, township trustees, county commissioners) within ten (10) days of its issuance of said decision. The city council (village council, township trustees, county commissioners) shall hold a public hearing within twenty (20) days of its receipt of such appeal, after giving public notice of such hearing in a newspaper of general circulation at least five (5) days prior to the date of the hearing, and shall make a final determination on the revocation of the conditional use permit within a reasonable time.

1000.30 REGULATION OF ADULT ENTERTAINMENT BUSINESSES

The following regulations shall apply to adult entertainment business as herein defined.

1000.31 Purpose

The purpose of Sections 1000.30 to 1000.34 inclusive of this Ordinance (Resolution) is to promote the public health, safety and welfare through the regulation of adult entertainment businesses. It is the intent of these sections to regulate entertainment businesses, as defined herein, in such a manner as to prevent the erosion of the character of the surrounding neighborhoods and to prohibit the establishment of such businesses within close proximity to existing audit entertainment businesses, residentially zoned areas, schools, churches, parks and playgrounds within the city (village, county, township).

1000.32 Definition

The following definition shall apply in the interpretation of this Ordinance (Resolution):

"Adult Entertainment Business" means an adult book store, adult motion picture theater, adult drive-in motion picture theater, or an adult only entertainment establishment as further defined in this section.

"Adult Book Store" means an establishment which utilizes 15 percent or more of its retail selling area for the purpose of retail sale or rental, or for the purpose of display by coin or slug-operated, or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices, or both, books, magazines, other periodicals, films, tapes and cassettes which are distinguished by their emphasis on adult materials as defined in this section.

"Adult Motion Picture Theater" means an enclosed motion picture theater which is regularly used or utilizes 15 percent or more of its total viewing time, for presenting material distinguished or characterized by an emphasis on matter depicting, describing or related to adult material as defined in this section.

"Adult Motion Picture Drive-In Theater" means an open air drive-in theater which is regularly used or utilizes 15 percent or more of its total viewing time, for presenting material distinguished or characterized by an emphasis on matter depicting, describing or related to adult material as defined in this section.

"Adult Only Entertainment Establishment" means an establishment where the patron directly or indirectly is charged a fee where the establishment features entertainment or services which constitute adult material as defined in this section, or which features exhibitions, dance routines, or gyrational choreography of persons totally nude, topless, bottomless, or strippers, male or female impersonators or similar entertainment or services which constitute adult material.

"Adult Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, slide, transparency, figure, image, description, motion picture film, phonographic record or tape, other tangible thing, or any service, capable of arousing interest through sight, sound, or touch, and:

a. Which material is distinguished or characterized by an emphasis on matter displaying, describing, or representing sexual activity, masturbation, sexual excitement, nudity, bestiality, or human bodily functions of elimination; or

b. Which service is distinguished or characterized by an emphasis on sexual activity, masturbation, sexual excitement, nudity, bestiality, or human bodily functions of elimination.

"Bottomless" means less than full opaque covering of male or female genitals, pubic area or buttocks.

"Nude or Nudity" means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than full, opaque covering of any portion thereof, or female breast(s) with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.

"Topless" means the showing of a female breast with less than a full opaque covering of any portion thereof below the top of the nipple.

"Sexual Activity" means sexual conduct or sexual contact, or both.

"Sexual Contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

"Sexual Excitement" means the condition of the human male or female genitals, when in a state of sexual stimulation or arousal.

1000.33 Conditional Use Permit Required

No building shall be erected, constructed, or developed, and no building or premises shall be reconstructed, remodeled, arranged for use or used for any adult entertainment business unless authorized by the issuance of a conditional use permit in accordance with the provisions of Article five (5) of this Ordinance (Resolution). In addition to said provisions, an adult entertainment business shall comply with the following conditional use criteria:

1. Adult entertainment businesses shall comply with the district regulations applicable to all properties in any district in which they are located.
2. No adult entertainment business shall be permitted in a location which is within 1,500 feet of another adult entertainment business;

3. No adult entertainment business shall be permitted in a location which is within 1,000 feet of any church, any public or private school, any park, any playground, or any social services facility or neighborhood center;
4. No adult entertainment business shall be permitted in a location which is within 500 feet of any residence or boundary of any residential district;
5. No adult entertainment business shall be permitted in a location which is within 200 feet of any boundary of any residential district in a local unit of government abutting the city (village, township).

1000.34 Zoning Of Adult Entertainment Businesses

Adult entertainment businesses shall be conditionally permitted in accordance with the following schedule:

Conditionally Permitted Use	Districts Wherein Permitted
Adult Book Store	(Indicate)
Adult Motion Picture Theater	(Indicate)
Adult Motion Picture Drive-In Theater	(Indicate)
Adults Only Entertainment Establishment	(Indicate)

1000.40 REGULATION OF MANUFACTURED HOME PARKS

The provision of Sections 1000.40 to 1000.44 inclusive provide for the location and regulation of manufactured home parks in order to foster their development and maintenance as an integral and stable part of the community.

1000.41 Definition

"Manufactured Home Park" means any tract of land upon which three or more manufactured homes used for habitation are parked, either free of charge or for revenue purposes, and include any roadway, building, structure, vehicle, or enclosure used or intended for use as a part of the facilities of such park. A tract of land which is subdivided and the individual lots are not for rent or rented, but are for sale or sold for the purpose of installation of manufactured homes on the lots is not a manufactured home park even though three or more manufactured homes are parked thereon, if the roadways are dedicated to the local government authority. "Manufactured Home Park" does not include any tract of land used solely for the storage or display for sale of manufactured homes.

"Manufactured Home" means any nonself-propelled vehicle transportable in one or more sections which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

1000.42 Approval Procedures

Manufactured home parks shall be located only in the Manufactured Home Park District (R-MH) and shall be developed according to the standards and regulations stated and referenced in Sections 1000.43 and 1000.44 inclusive. The procedure to amend the Official Zoning Map to establish the R-MH District shall be that procedure for amendments specified in Article 6.

1000.43 General Standards for Manufactured Home Parks

The Planning (Zoning) Commission and the City Council (Village Council, Board of Trustees, Board of County Commissioners) shall review the particular facts and circumstances of each proposed manufactured home park development in terms of the following standards and shall find adequate evidence that such development meets these standards:

1. The proposed park will be served adequately by essential public facilities and services such as highways, streets, drainage, refuse disposal, schools, police and fire protection, or that the persons or agencies proposing the establishment of the park shall be able to provide any such services adequately;

2. The vehicular approaches to the proposed park property will be so designed as not to create traffic interference or congestion on surrounding public streets or roads;

3. The establishment of the proposed park will not result in the damage, destruction, or loss of any natural, scenic, or historic features of major importance;

4. The establishment of the proposed park shall not be demonstrably detrimental to the value of surrounding properties or to the character of the adjacent neighborhoods.

1000.44 Manufactured Home Park Requirements

All manufactured home parks shall comply with the requirements of Ohio Administrative Code Chapter 3701 promulgated by the Ohio Public Health Council in accordance with Chapter 3733 of the Ohio Revised Code.

1000.50 REGULATION OF SWIMMING POOLS AS ACCESSORY USES

Sections 1000.50 to 1000.53 inclusive shall apply to the location and maintenance of swimming pools.

1000.51 Purpose

It is the purpose of sections 1000.50 to 1000.53 inclusive to promote the public health, safety, and welfare through the regulation of swimming pool facilities which are constructed, operated or maintained as an accessory use.

1000.52 Private Swimming Pools

No private swimming pool, exclusive of portable swimming pools with a diameter of less than twelve (12) feet or with an area of less than one hundred (100) square feet, or of a farm pond, shall be allowed in any residential district or commercial district except as an accessory use, and shall comply with the following requirements:

1. The pool is intended to be used and is used solely for the enjoyment of the occupants of the property on which it is located and their guests.
2. The pool may be located anywhere on the premises except in required front yards, provided that it shall not be located closer than twelve (12) feet to any property line or easement.
3. The swimming pool, or the entire property upon which it is located, shall be walled or fenced in such a manner as to prevent uncontrolled access by children from the street and from adjacent properties. No such fence shall be less than six (6) feet in height, and it shall be maintained in good condition with a gate and lock.

1000.53 Community or Club Swimming Pools

A community or club swimming pool shall be any pool constructed by an association of property owners, or by a private club or association, for use and enjoyment by members and their families. Such swimming pools shall comply with the following requirements:

1. The pool is intended solely for and is used solely for the enjoyment of the members and families and guests of members of the association or club under whose ownership or jurisdiction the pool is operated.
2. The pool and accessory structures thereto, including the area used by the bathers, shall not be located close than seventy-five (75) feet to any property line or easement.
3. The swimming pool, its accessory facilities, and all of the area used by the bathers shall be so walled or fenced as to prevent uncontrolled access by children from the street or adjacent properties. The said fence or wall shall not be less than 6 feet in height and maintained in good condition with a gate and lock. The area surrounding the enclosure, except for the parking spaces, shall be suitably landscaped with grass, hardy shrubs, and trees and maintained in good condition.
4. Exterior lighting shall be so shaded or directed that it does not cast light directly upon adjacent properties.
5. Such pool facilities shall not be operated prior to 9:00 a.m. in the morning or after 10:00 p.m. in the evening.

1000.60 REGULATION OF LONG-TERM PARKING FACILITIES AS ACCESSORY USES

Sections 1000.60 to 1000.63 inclusive shall apply to the location and operation of any long-term parking facility as an accessory use.

1000.61 Purpose

It is the purpose of Sections 1000.60 to 1000.63 inclusive to regulate long-term parking facilities constructed, operated, or maintained as accessory uses in order to promote the public health, safety, and welfare.

1000.62 Conditional Use Permit Required

No person shall establish, operate or maintain on any premises as an accessory use a parking facility where any vehicles, to include tractors, trailers, boats, campers, recreational vehicles, buses, trucks, or automobiles, are to be parked for a continuous period exceeding six (6) days without obtaining a conditional use permit for such accessory use.

1000.63 Permit Requirements

In addition to complying with all other provisions of this Ordinance (Resolution), particularly the requirements of Articles 5 and 11, the applicant for the conditional use permit shall give evidence that the premises proposed for such use complies with the following conditions:

1. That no boundary of the proposed parking area is within fifty (50) feet of a residential district boundary.
2. That the proposed parking area will not prevent access to adjacent properties by fire safety equipment.
3. That the proposed parking area will be screened in such a manner that the vehicles thereon parked will not be visible from the ground level of any adjacent residential properties.
4. That fencing and lighting of the facility will be sufficient to provide for its reasonable security.
5. That no service work, maintenance work, repair work, painting work, or other vehicular work shall take place on the premises.

1000.70 REGULATION OF HOME OCCUPATIONS

Sections 1000.70 to 1000.75 inclusive shall apply to the location, operation, and maintenance of home occupations.

1000.71 Purpose

It is the purpose of Sections 1000.70 to 1000.75 inclusive of this Ordinance (Resolution) to promote the public health, safety, and welfare through the regulation of home occupations. It is further the intent of these Sections to allow limited non-residential uses in residential structures which are compatible with the residential character of their surroundings.

1000.72 Definition

"Home Occupation" means an accessory use which is an activity, profession, occupation, service, craft, or revenue-enhancing hobby which is clearly incidental and subordinate to the use of the premises as a dwelling, and is conducted entirely within the dwelling unit without any significant adverse effect upon the surrounding neighborhood. Activities such as teaching, tutoring, tax consulting and the like shall involve not more than three receivers of such services at any one time, with the exception of certified or uncertified Type B Family Day-Care Homes, which constitute a residential use and not an accessory use.

1000.73 Home Occupation As A Permitted Use

A home occupation shall be a permitted use if it complies with the following requirements:

1. The external appearance of the structure in which the use is conducted shall not be altered, and not more than one sign no larger than two (2) square feet shall be mounted flush to a wall of the structure.
2. No internal or external alterations, construction, or reconstruction of the premises to accommodate the use shall be permitted.
3. There shall be no outside storage of any kind related to the use, and only commodities produced on the premises may be sold on the premises; no display of products may be visible from the street.
4. Not more than twenty-five (25) percent of the gross floor area of the dwelling shall be devoted to the use.
5. No equipment, process, materials or chemicals shall be used which create offensive noise, vibration, smoke, dust, odor, heat, glare, x-rays, radiation, or electrical disturbances.
6. No additional parking demand shall be created.
7. No person who is not a resident of the premises may participate in the home occupation as an employee or volunteer.

1000.74 Home Occupation As A Conditionally Permitted Use

A person may apply for a conditional use permit for a home occupation which does not comply with the requirements of Section 1000.73. The criteria for the issuance of such a permit for a home occupation are as follows:

1. There shall be no more than two (2) non-residential employees or volunteers to be engaged in the proposed use.
2. Sales of commodities not produced on the premises may be permitted, provided that the commodities are specified in the application and are reasonably related to the home occupation.
3. The home occupation may be permitted to be conducted in a structure accessory to the residence, provided the application so specifies.
4. Outside storage related to the home occupation may be permitted, if totally screened from adjacent residential lots, provided the application so specifies.
5. Not more than thirty (30) percent of the gross floor area of any residence shall be devoted to the proposed home occupation.
6. The external appearance of the structure in which the use is to be conducted shall not be altered, and not more than one sign no larger than two (2) square feet shall be mounted flush to the wall of the structure.
7. Minor or moderate alterations in accordance with (specify code) may be permitted to accommodate the proposed use, but there shall be no substantial construction or reconstruction.
8. No equipment, process, materials or chemicals shall be used which create offensive noise, vibration, smoke, dust, odor, heat, glare, x-rays, radiation, or electrical disturbances.
9. No more than two (2) additional parking places may be proposed in conjunction with the home occupation, which shall not be located in a required front yard.

1000.75 Invalidation of Home Occupation Conditional Use Permit

For the purposes of this Ordinance (Resolution), a conditional use permit issued for a home occupation shall cease to be valid at such time as the premises for which it was issued is no longer occupied by the holder of said permit. Such conditional use permit shall also be immediately invalidated upon the conduct of the home occupation in any manner not approved by the Board of Zoning Appeals.

1000.80 REGULATION OF GROUP RESIDENTIAL FACILITIES

Sections 1000.80 to 1000.85 inclusive shall apply to the location, operation, and maintenance of group residential facilities.

1000.81 Purpose

It is the purpose of Sections 1000.80 to 1000.85 inclusive of this Ordinance (Resolution) to regulate the location, operation, and maintenance of group residential facilities in order to promote the public health, safety, and welfare. It is the intent of these Sections to provide for the assimilation of these facilities in stable and suitable neighborhoods so that the living environments of their residents are conducive to their rehabilitation.

1000.82 Definition

"Group Residential Facility" shall mean any community residential facility, licensed and/or approved and regulated by the State of Ohio, which provides rehabilitative or habilitative services. There are two classes of Group Residential Facilities:

Class I: Any state, federal, or locally approved dwelling or place used as a foster home for children or adults (not including nursing homes) or as a home for the care or rehabilitation of dependent or predelinquent children, the physically handicapped or disabled, or those with development disabilities or mental illnesses. A Class I Type A group residential facility contains six (6) or more residents, exclusive of staff. A Class I Type B group residential facility contains five (5) or less residents, exclusive of staff.

Class II: Any state, federal, or locally approved dwelling or place used as a home for juvenile offenders; a halfway house providing residential care or rehabilitation for adult offenders in lieu of institutional sentencing; a halfway house providing residence for persons leaving correctional institutions; and residential rehabilitation centers for alcohol and drug users, provided detoxification is expressly prohibited on such premises. A Class II Type A group residential facility contains six (6) or more residents, exclusive of staff. A Class II Type B group residential facility contains five (5) or less residents, exclusive of staff.

1000.83 Conditional Use Permit Required

A Class I Type B group residential facility is permitted by right in any residential district. No other group residential facility shall be established, operated or maintained on any premises unless authorized by the issuance of a conditional use permit in accordance with the provisions of Article 5 of this Ordinance (Resolution). In addition to said provisions, such group residential facilities shall comply with the following conditional use criteria:

1. Evidence is presented that the proposed facility meets the certification, licensing, or approval requirements of the appropriate state agency.
2. Evidence is presented that the proposed facility meets local fire safety requirements for the proposed use and level of occupancy.
3. Evidence is presented that the proposed facility will not generate an unreasonable increase in traffic volume or require special off-street parking.
4. Such facilities shall comply with the district regulations applicable to other properties in the zoning district in which they are located.
5. No such facility may be located within 600 feet of another such facility.
6. No signs shall be erected by such facility for purposes of identification except a permitted street address sign.
7. The exterior of all such facilities shall not be altered in character but shall be compatible with other residential dwellings. However, any improvement required by code or necessitated by licensing requirements shall not be deemed incompatible.

8. Such facility shall be reasonably accessible, by virtue of its location or transportation provided by the applicant, to medical, recreational, and retail services required by its residents, and to employment opportunities, if applicable, and shall be in a relatively safe and stable neighborhood.
9. The applicant shall provide a plan indicating the manner in which the facility will maintain contact with neighborhood residents, to include a structured procedure whereby their grievances may be filed and resolved.
10. The applicant shall provide documentation indicating the need for the facility, the specific clientele it will serve, and the location and type of similar facilities operated by the applicant.

1000.84 Zoning of Group Residential Facilities

Group residential facilities shall be conditionally permitted uses as follows:

Class I Type A	(specify districts)
Class I Type B	(permitted by right in all residential districts; specify other districts)
Class II Type A	(specify districts)
Class II Type B	(specify districts)

1000.85 Variance to Distancing Requirement

The Board of Zoning Appeals may grant a variance with respect to the distancing requirement contained in 1000.83(5) if the applicant clearly demonstrates that the proposed location has unique advantages with respect to proximity to employment opportunities, social services, public transportation, or similar amenities.

1000.86 Uniformity With Respect to Granting of Conditional Use Permits

The granting of conditional use permits for the establishment of Group Residential Facilities shall be uniformly and equitably done, irrespective of considerations beyond the scope of these regulations.

1000.90 REGULATION OF FACTORY-BUILT HOUSING; DESIGN AND APPEARANCE STANDARDS

Sections 1000.90 to 1000.96 inclusive of this Ordinance (Resolution) shall apply to the location, construction, and maintenance of factory-built housing in all districts other than the manufactured home park district (R-MH).

1000.91 Purpose

It is the purpose of Sections 1000.90 to 1000.96 inclusive of this Ordinance (Resolution) to promote the health, safety, and welfare of the community by establishing regulations governing the siting, construction, and maintenance of factory-built housing. It is further the intent of these Sections to permit a wider range of housing opportunities while assuring the compatibility of a variety of housing types within certain residential districts.

1000.92 Definitions

"Factory-built Housing" means a factory-built structure designed for long-term residential use, the components of which are essentially constructed or assembled prior to its delivery to and installation upon a site. For the purposes of this Ordinance (Resolution), "factory-built housing" shall include the following:

1. Manufactured Home. Any nonself-propelled vehicle transportable in one or more sections which, in the traveling mode, is 8 body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a permanent dwelling unit with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, and which bears a label certifying that it is built in compliance with the Federal Manufactured Housing Construction and Safety Standards.

2. Modular Home. Factory-built housing certified as meeting the [local or] State Building Code as applicable to modular housing. Once certified by the state, modular homes shall be subject to the same standards as site-built homes.

3. Mobile Home. A transportable, factory-built home, designed to be used as a year-round residential dwelling and built prior to enactment of the Federal Manufactured Housing Construction and Safety Standards Act of 1974, which became effective June 15, 1976, or built subsequent to such Act but not certifiable to compliance with it.

1000.93 Siting Requirements

Any factory-built housing proposed to be located in any district shall comply with the following requirements:

1. The structure shall be installed upon and properly attached to a foundation system that provides adequate support of the structure's vertical and horizontal loads and transfers these and other imposed forces, without failure, from the structure to the undisturbed ground below the frost line.

2. All hitches, axles, wheels, and conveyance mechanisms shall be removed from the structure.

3. The structure shall be so oriented on the site that its long axis is parallel with the street, and it shall have an entranceway facing the street, except where diagonal placement and the addition of a garage, carport, or other accessory structure may be permitted by subdivision regulation and yard requirement.

4. The site shall be suitably landscaped, with adequate screening devices as elsewhere required.

5. The siting of the structure shall comply with all yard and setback requirements in effect for the district for which it is proposed.

6. The siting of the structure shall comply with all parking requirements in effect for the district for which it is proposed.

7. The site shall be serviced by utilities in such manner as required by Ordinance (Resolution).

1000.94 Zoning Of Factory-Built Housing

Mobile homes shall be permitted only in approved mobile home parks, unless otherwise authorized in this Ordinance (Resolution). Manufactured homes and modular homes which meet the design and appearance standards contained in Section 1000.95 shall be permitted accordingly.

1000.95 Single-Family Design and Appearance Standards

Single-family residential homes, whether of modular, manufactured, or site-built construction, shall comply with the following design and appearance standards:

1. The structure shall be in conformance with the siting requirements contained in Section 1000.93.

2. The structure and any accessory structures or uses will conform to all other regulations in effect for the district in which it is located.

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1000.96 Uniformity With Respect to Granting Of Variances

The granting of variances from the requirements of this Ordinance (Resolution) with respect to the siting of single-family home structures, their design or appearance, shall be uniformly and equitably done, irrespective of the fact that the structure proposed for such siting is a site-built structure, modular or manufactured home, and shall be guided by the provisions of Article 4 of this Ordinance (Resolution).

ARTICLE 11

OFF-STREET PARKING AND LOADING FACILITIES

1100 General Parking Requirements.

In all districts, except the Central Business District, at any time any building, structure or use of land is erected, enlarged, increased in capacity, or used, there shall be provided for every use off-street parking spaces for automobiles in accordance with the provisions of Section 1100 to 1141 of this Article. A parking plan shall be required for all uses except for single or two-family residential uses. The parking plan shall be submitted to the Zoning Administrator as a part of the application for a zoning permit. The plan shall show the boundaries of the property, parking spaces, access driveways, circulation patterns, drainage and construction plans, and boundary walls, fences and a screening plan, as appropriate.

Except in the Central Business District, whenever a building or use constructed or established after the effective date of this Ordinance (Resolution) is changed or enlarged in floor area, number of employees, number of dwelling units, seating capacity, or otherwise to create a need for an increase of Ten (10) Percent or more in the number of existing parking spaces, such spaces shall be provided on the basis of the enlargement or change. Whenever a building or use existing prior to the effective date of this Ordinance (Resolution) is enlarged to the extent of Fifty (50) Percent or more in floor area or in the area used, such building or use shall then and thereafter comply with the parking requirements set forth herein.

1110 Off-Street Parking Design Standards.

All off-street parking facilities including entrances, exits, maneuvering areas, and parking spaces shall be in accordance with the following standards and specifications:

1. Parking Space Dimensions: Each off-street parking space shall have an area of not less than 162 square feet exclusive of access drives or aisles, and shall be of usable shape and condition.

2. Access: There shall be adequate provision for ingress and egress to all parking spaces. Where the lot or parking spaces do not provide direct access to a public street or alley, an access drive shall be provided, with a dedicated easement of access, as follows:

    a. For one single-, two- or three-family residential dwellings, the access drive shall be a minimum of nine 9 feet in width.

    b. For all other residential uses and all other uses, the access drive shall be a minimum of eighteen 18 feet in width.

c. All parking spaces, except those required for single, two-, or three-family dwellings, shall have access to a public street or alley in such a manner that any vehicle leaving or entering the parking area from or into a public street or alley shall be traveling in a forward motion.

3. Setbacks: The location of off-street parking facilities for more than five (5) vehicles may be located in required yards as specified elsewhere in this Ordinance (Resolution) notwithstanding the requirements specified in the Official and Supplementary Schedules of District Regulations and Dimensional Requirements. In no case, however, shall the parking area be located closer than three (3) feet to any street or alley.

4. Screening: In addition to the setback requirements specified in this Ordinance (Resolution) for off-street parking facilities for more than five (5) vehicles, screening shall be provided on each side of a parking area that abuts any Residential District. Screening shall comply with the requirements of Section 940 of this Ordinance (Resolution).

5. Paving: All required parking spaces, except for uses within any M District if said parking area is at least 700 feet from any Residential District, together with driveways, and other circulation areas, shall be hard-surfaced with a pavement having an asphalt or concrete binder, provided, however, that variances for parking related to school auditoriums, assembly areas, sports fields and other community meeting or recreation areas may be granted, provided that paved areas shall be provided for daily use parking areas. Where paving is not required, proper dust control measures shall be undertaken and maintained.

6. Drainage: All parking spaces, together with driveways, aisles, and other circulation areas shall be graded and drained so as to dispose of surface water which might accumulate within or upon such area, and shall be designed to prevent the excess drainage of surface water onto adjacent properties, walkways, or onto the public streets. Adequate arrangements shall be made to insure acceptable diversion to an adequate storm water drainage system.

7. Barriers: Wherever a parking lot extends to a property line, fencing, wheel stops, curbs, or other suitable barriers shall be provided in order to prevent any part of a parked vehicle from extending beyond the property line.

8. Visibility: Access of driveways for parking areas shall be located in such a way that any vehicle entering or leaving such parking area shall be clearly visible for a reasonable distance by any pedestrian or motorist approaching the access or driveway from a public or private street or alley.

9. Marking: All parking areas for twenty (20) or more spaces shall be marked with paint lines, curb stones, or in some other manner approved by the Zoning Administrator, and shall be maintained in a clearly visible condition.

10. Maintenance: Any owner of property used for parking areas shall maintain such areas in good condition without holes and free of all dust, trash, or other debris.

11. Signs: Where necessary due to multiple curb cuts, the entrances, exits, and the intended circulation pattern of the parking area shall be clearly marked.

12. Lighting: Any lights used to illuminate a parking lot shall be so arranged as to direct the light away from the adjoining property in any R District.

1120 **Determination of Required Spaces.**

In computing the number of parking spaces required by this Ordinance (Resolution), the following rules shall apply:

1. Where floor area is designated as the standard for determining parking space requirements, floor area shall be the sum of the gross horizontal area of all the floors of a non-residential building measured from the faces of the exterior walls, excluding only stairs, washrooms, elevator shafts, and similar nonusable areas.

2. Where seating capacity is the standard for determining parking space requirements, the capacity shall mean the number of seating units installed or indicated or each eighteen (18) lineal inches of benches, or pews, except where occupancy standards are set by the fire marshal.

3. Fractional numbers shall be increased to the next whole number.

4. The parking space requirements for a use not specifically specified in this Ordinance (Resolution) shall be determined following the procedure for "substantially similar uses" as required by Sections 560 to 564 of this Ordinance (Resolution).

1121 **Joint Or Collective Parking Facilities.**

The joint or collective provision of required off-street parking areas shall comply with the following standards and requirements:

1. All required parking spaces shall be located on the same lot with the building or use served, except that where an increase in the number of spaces is required by a change or enlargement of use, or where such spaces are provided collectively or used jointly by two (2) or more buildings or establishments, the required spaces may be located not farther than 500 feet from the building served.

2. Not more than fifty (50) percent of the parking spaces required for theaters, bowling alleys, dance halls, night clubs, taverns and similar uses, and up to one hundred percent (100) of the parking spaces required for churches, schools, auditoriums and similar uses may be provided and jointly used by banks, offices, retail stores, repair shops, service establishments and similar uses that are not normally open, used, or operated during the same hours as the uses with which such spaces are jointly or collectively used.

3. In any case where the required parking spaces are not located on the same lot with the building or use served, or where such spaces are collectively or jointly provided and used, a written agreement thereby assuring their retention for such purposes shall be properly drawn and executed by the parties concerned, approved as to form by legal counsel, and filed with the application for a zoning permit.

1122 **Off-Street Storage Areas For Drive-In Services.**

Establishments which by their nature create lines of customers waiting to be served within automobiles shall provide off-street storage areas in accordance with the following requirements:

1. Photo pickups, restaurants, drive-thru beverage docks, and other similar commercial establishments that can normally serve customers in 3 minutes or less shall provide no less than five (5) storage spaces per window. Drive-in restaurants and other similar uses which require an additional stopping point for ordering shall provide a minimum of three (3) additional storage spaces for each such stopping point.

2. Other commercial establishments such as banks, savings and loan offices, or other similar facilities with service or money windows shall provide no less than four (4) storage spaces per window.

3. Self-serve automobile washing facilities shall provide no less than three (3) storage spaces per stall. All other automobiles washing facilities shall provide a minimum of six (6) storage spaces per entrance.

4. Motor vehicle service stations shall provide no less than two (2) storage spaces for each accessible side of a gasoline pump island. Gasoline pumps shall not be located closer than fifteen (15) feet to any street right-of-way line.

1123 **Parking Of Disabled Vehicles.**

The parking of a disabled vehicle within a residential district for a period of more than one week shall be prohibited, except that such vehicle may be stored in an enclosed garage or other accessory building, provided that no business shall be conducted in connection therewith while such vehicle is parked or stored.

1130 **Parking Space Requirements.**

For the purposes of this Ordinance (Resolution) the following parking space requirements shall apply, except within the Central Business District, and the number of parking spaces required for uses not specifically mentioned shall be determined by the Board of Zoning Appeals following the "substantially similar use" procedure as specified in Sections 560 to 564 of this Ordinance (Resolution):

1. Residential Uses

   a. Single family or two family dwelling -- Two for each unit.

b. Apartments, Townhouses or multi-family dwellings -- Two for each unit.

c. Mobile homes -- Two for each unit.

2. Business Related uses

a. Animal hospitals and kennels -- One for each 400 square feet of floor area and one for each two employees.

b. Motor Vehicle repair station -- One for each 400 square feet of floor area and one for each employee.

c. Motor Vehicle salesroom -- One for each 400 square feet of floor area and one for each employee.

d. Motor Vehicle service stations -- Two for each service bay and one for every two gasoline pumps.

e. Car washing facilities -- One for each employee.

f. Banks, financial institutions, post offices, and similar uses-- One for each 250 square feet of floor area and one for each employee.

g. Barber and Beauty shops -- Three for each barber or beauty operator.

h. Carry-out restaurants -- One for each 200 square feet of floor area and one for each two employees.

i. Drive-in restaurants -- One for each 125 square feet of floor area and one per each two employees.

j. Hotels, motels -- One for each sleeping room plus one space for each two employees.

k. Boarding, Rooming, Tourist and Bed/Breakfast Home -- One for each sleeping room.

l. Furniture, appliance, hardware, machinery or equipment sales and service. and wholesale establishments -- Two plus one additional space for each 200 square feet of floor area over 1000 square feet.

m. Consumer and trade service uses not otherwise specified -- One for each employee.

n. Funeral homes, mortuaries and similar type uses -- One for each 50 square feet of floor area in slumber rooms, parlors, or service rooms.

o. Laundromats -- One for every two washing machines.

p. Administrative, business and professional office uses -- One for each 200 square feet of floor area.

q. Sit-down restaurants, taverns, night clubs, and similar uses-- One for each three persons of capacity.

r. Retail stores -- One for each 150 square feet of floor area.

s. All other types of business or commercial uses permitted in any business district -- One for each 150 square feet of floor area.

3. Recreational and Entertainment Uses

a. Bowling alleys -- Four for each alley or lane; one for each three persons of capacity of the area used for restaurant, cocktail lounge, or similar use; and one for each three employees.

b. Dance halls, skating rinks -- One for each 100 square feet of floor area used for the activity; one for each three persons of capacity in a restaurant, snack bar, or cocktail lounge; and one for each three employees.

c. Outdoor swimming pools: public, community or club -- One for each ten persons of capacity, and one for each three persons of capacity for a restaurant.

d. Auditoriums, sport arenas, theaters, and similar uses -- One for each four seats.

e. Miniature golf courses -- Two for each hole and one for each employee.

f. Private clubs and lodges -- One for each ten members.

g. Tennis facilities, racquetball facilities or similar uses -- Two for each playing area; one for each employee; and one for each 100 square feet of other activity area.

4. Institutional Uses

a. Churches and other places of religious assembly -- One for each eight (8) seats in main assembly room, or one for each classroom, whichever is greater.

b. Hospitals -- One for each three beds.

c. Sanitariums, homes for the aged, nursing homes, rest homes, similar uses -- One for each 3 beds.

d. Medical and dental clinics -- One for every 100 square feet floor area.

e. Libraries, museums, and art galleries -- Ten, and one for each 300 square feet floor area in excess of 2,000 square feet.

5. Educational Institution (Public, Parochial, or Private) Uses

a. Elementary schools, and kindergartens -- Four for each classroom; one for every four seats in auditoriums or assembly halls; and one for each additional non-teaching employee.

b. High schools and middle schools -- One for every ten students, or one for each teacher and employee, or one for every four seats in auditoriums, assembly areas or sports fields, whichever is greater.

c. Business, technical and trade schools -- One for each two students.

d. Child care centers, nursery schools, and similar uses -- Four for each classroom.

6. Manufacturing Uses

a. All types of manufacturing, storage, and wholesale uses permitted in any manufacturing district -- One for every employee (on the largest shift for which the building is designed), and one for each motor vehicle used in the business.

b. Cartage, express, parcel delivery, and freight terminals -- One and one half for every one employee (on the largest shift for which the building is designed) and one for each motor vehicle maintained on the premises.

1131 **Handicapped Parking**

Parking facilities serving buildings and facilities required to be accessible to the physically handicapped shall have conveniently located designated spaces provided as follows:

Total Spaces in Lot/Structure	Number of Designated Accessible Spaces
Up to 100	One space per 25 parking spaces
101 to 200	4 spaces, plus one per 50 spaces over 100
201 to 500	6 spaces, plus one per 75 spaces over 200
Over 500	10 spaces, plus one per 100 spaces over 500

1132 **Elderly Housing Parking**

Each parking space provided for an elderly housing facility shall as a minimum measure nine (9) feet in width and twenty (20) feet in length, with aisles measuring twenty-one (21) feet in width. There shall be provided one (1) such parking space per dwelling unit and per regular shift employee, except that the Board of Zoning Appeals may approve a parking plan for an elderly housing facility which provides three (3) such parking spaces for every four (4) dwelling units and one (1) per regular shift employee, if the site plan includes a set-aside of landscaped area, which set-aside is not part of any open-space requirement and which is accessible to egress/entrance for parking purposes, should additional parking spaces be deemed necessary by the Board of Zoning Appeals subsequently.

1140 **Off-Street Loading Space Requirements.**

In any district, except for the Central Business District, in connection with every building or part thereof hereafter erected and having a gross floor area of 3,000 square feet or more, which is to be occupied by manufacturing, storage, warehouse, goods display, retail store, wholesale store, hotel, hospital, mortuary, laundry, dry cleaning, or other uses similarly requiring the receipt or distribution by vehicles of material or merchandise, there shall be provided and maintained, on the same lot with the building, at least one off-street loading space, and one additional loading space for each 10,000 square feet or fraction thereof of gross floor area so used in excess of 3,000 square feet.

1141 **Off Street Loading Design Standards.**

All off-street loading spaces shall be in accordance with the following standards and specifications:

1. Loading Space Dimensions: Each loading space shall have minimum dimensions not less than 12 feet in width, 65 feet in length, and a vertical clearance of not less than 14 feet.

2. Setbacks: Notwithstanding other provisions of this regulation and the Official and Supplementary Schedules of Permitted Uses and Dimensional Requirements, off-street loading spaces may be located in the required rear or side yard of any (indicate specific districts) provided that not more than 90% of the required rear or side yard is occupied, and no part of any loading space shall be permitted closer than 50 feet to any Residential District nor closer than 5 feet from any street or alley.

3. Screening: In addition to the setback requirements specified above, screening shall be provided on each side of an off-street loading space that abuts any Residential District. Screening shall comply with the requirements of Section 940 or this Ordinance (Resolution).

4. Access: All required off-street loading spaces shall have access from a public street or alley in such a manner that any vehicle leaving the premises shall be traveling in a forward motion.

5. Paving: All required off-street loading spaces, except for uses within any M District if said loading spaces are at least 200 feet from any Residential District, together with driveways, aisles, and other circulation areas, shall be surfaced with an asphaltic or portland cement binder pavement in order to provide a durable or dust free surface. Where paving is not required, proper dust control measures shall be undertaken and maintained.

6. Drainage: All loading spaces, together with driveways, aisles, and other circulation areas, shall be designed to prevent the excess drainage of surface water on to adjacent properties, walkways or onto the public streets. Arrangements shall be made to insure acceptable diversion to an adequate storm water drainage system.

7. Lighting: Any lights used to illuminate a loading area shall be so arranged as to reflect the light away from adjoining property.

ARTICLE 12

SIGNS

1200 General.

The purpose of this Article is to promote and protect the public health, welfare, and safety by regulating existing and proposed outdoor advertising, outdoor advertising signs, and outdoor signs of all types. It is intended to protect property values, create a more visually attractive economic and business climate, enhance and protect the physical appearance of the community, and preserve the scenic and natural beauty of designated areas. It is further intended to reduce sign or advertising clutter, distraction, and obstructions that may contribute to traffic accidents, reduce hazards that may be caused by signs overhanging or projecting over public rights-of-way, provide more open space, curb the deterioration of the natural environment, and enhance community development by permitting signs which are compatible with their surroundings.

1201 Governmental Signs Excluded.

For the purpose of this Ordinance (Resolution) "sign" does not include signs erected and maintained pursuant to and in discharge of any governmental function, or required by any law, ordinance, or governmental regulation.

1202 General Requirements for All Signs and Districts.

The regulations contained in this section shall apply to all signs and all use districts.

1. Any illuminated sign or lighting device shall employ only light emitting a light of constant intensity, and no sign shall be illuminated by or contain flashing, intermittent, rotating, or moving light or lights. In no event shall an illuminated sign or lighting device be placed or directed so as to permit the beams and illumination therefrom to be directed or beamed upon a public thoroughfare, highway, sidewalk, or adjacent premises so as to cause glare or reflection that may constitute a traffic hazard or nuisance;

2. No sign shall employ any parts or elements which revolve, rotate, whirl, spin or otherwise make use of motion to attract attention. Subsections (1) and (2) of this section shall not apply to any sign performing a public service function indicating time, temperature, stock market quotations or similar services;

3. All wiring, fittings, and materials used in the construction, connection, and operation of electrically illuminated signs shall be in accordance with the provisions of the local electric code in effect, if any;

4. No projecting sign shall be erected or maintained from the front or face of a building a distance of more than two (2) feet, including those projecting from the face of any theater, hotel, or motel marquee;

5. No sign shall be placed on the roof of any building, except those signs whose supporting structure is screened so the sign appears to be a continuation of the face of the building;

6. No portable or temporary sign shall be placed on the front or face of a building or on any premises, except as provided in Section 1220 herein;

7. No sign or part thereof shall contain or consist of banners, posters, pennants, ribbons, streamers, spinners, or other similar moving devices. Such devices, as well as strings of lights, shall not be used for the purpose of advertising or attracting attention when not part of a sign;

8. No sign erected or maintained in the window of a building, visible from any public or private street or highway, shall occupy more than twenty (20) per cent of the window surface;

9. No sign of any classification shall be installed, erected, or attached in any form, shape, or manner to a fire escape or any door or window giving access to any fire escape;

10. All signs hung and erected shall be plainly marked with the name and telephone number of the person, firm, or corporation responsible for maintaining the sign;

11. Should any sign be or become unsafe or be in danger of falling, the owner thereof or the person maintaining the same shall, upon receipt of written notice from the Zoning Administrator, proceed at once to put such sign in a safe and secure condition or remove the sign;

12. No sign shall be placed in any public right-of-way except publicly-owned signs, such as traffic control signs and directional signs. Signs directing and guiding traffic and parking on private property but bearing no advertising matter shall be permitted on any property;

13. All signs shall be so designed and supported as to carry the weight of the sign, and shall comply with the local building code in effect;

14. All signs shall be secured in such a manner as to prevent significant movement due to wind;

15. No advertising signs shall be attached to or supported by a tree, utility pole, trash receptacle, bench, vending machine, or public shelter;

16. No sign shall contain words, images, or graphic illustrations of an obscene or indecent nature;

17. No sign shall be attached in such manner that it may interfere with any required ventilation openings;

18. No sign shall be located on a vacate lot, except for the purpose of advertising the lot for sale or lease, or for such purpose as the notification of present danger or the prohibition of trespassing;

19. No sign shall be located nearer than eight (8) feet vertically or four (4) feet horizontally from any overhead electrical wires, conductors, or guy wires;

20. No vehicle or trailer may be parked on a business premises or a lot for the purpose of advertising a business, product, service, event, object, location, organization, or the like.

1210 **Permit Required.**

1. No person shall locate or maintain any sign, or cause a sign to be located or maintained, unless all provisions of this Article have been met. To assure compliance with these regulations, a sign permit issued pursuant to this Ordinance (Resolution) shall be required for each sign unless specifically exempted in this Article.

2. A sign initially approved for which a permit has been issued shall not be modified, altered or replaced, nor shall design elements of any building or lot upon which such sign is maintained be modified, altered or replaced if any such design element constituted a basis for approval of such sign unless a new or amended permit is obtained consistent with these regulations.

3. The repainting, changing of parts and preventive maintenance of signs shall not be deemed alterations requiring a sign permit.

1211 **Signs Permitted in All Districts Not Requiring a Permit.**

1. Signs advertising the sale, lease, or rental of the premises upon which the sign is located, shall not exceed twelve (12) square feet in area, except in all residential districts where the area of the sign shall not be more than six (6) square feet;

2. Professional name plates not to exceed four (4) square feet in area;

3. Signs denoting the name and address of the occupants of the premises, not to exceed two (2) square feet in area.

1212 **Signs Permitted in Any District Requiring a Permit.**

1. Signs or bulletin boards customarily incidental to places of worship, libraries, museums, social clubs, or societies, which signs or bulletin boards shall not exceed fifteen (15) square feet in area and which shall be located on the premises of such institution;

2. Any sign advertising a commercial enterprise, including real estate developers or subdividers, in a district zoned residential shall not exceed twelve (12) square feet in area and shall advertise only the names of the owners, trade names, products sold and/or the business or activity conducted on the premises where such sign is located.

1213 **Signs Permitted in Commercial and Manufacturing Districts Requiring a Permit.**

The regulations set forth in this section shall apply to signs in all commercial and manufacturing districts and such signs shall require a permit.

1. In a commercial or manufacturing district, each business shall be permitted one flat or wall on-premises sign. Projection of wall signs shall not exceed two feet measured from the face of the main building. The area of all permanent on-premises signs for any single business enterprise may be an area equivalent to one and one half ($1\frac{1}{2}$) square feet of sign area for each lineal foot of building width, or part of a building, occupied by such enterprise but shall not exceed a maximum area of one hundred (100) square feet.

2. In a commercial or manufacturing district, two off-premises signs with a total area not exceeding six hundred (600) square feet may be permitted at a single location. No single off-premises sign shall exceed one thousand two hundred (1200) square feet, nor shall off-premises signs visible to approaching traffic have a minimum spacing of less than two hundred (200) feet. Off-premises signs shall conform to all applicable yard and height regulations for the appropriate zoning district, except that such signs intended to be viewed from an elevated highway shall be not more than twenty (20) feet above the level of the roadway at its nearest point. Off-premises wall signs shall have all structural and supporting members concealed from view.

1220 **Temporary Signs.**

Temporary signs not exceeding fifty (50) square feet in area, announcing special public or institutional events, the erection of a building, the architect, the builders, or contractors may be erected for a period of sixty (60) days plus the construction period. Such temporary signs shall conform to the general requirements listed in Section 1202, the setback requirements in Sections 1240-1243 and, in addition, such other standards deemed necessary to accomplish the intent of this Article as stated in Section 1200.

1221 **Free Standing Signs.**

Free-standing on-premises signs not over thirty (30) feet in height, having a maximum total sign area of one hundred (100) sq. ft. per display area and located not closer than ten (10) feet to any street right-of-way line and not closer than thirty (30) feet to any adjoining lot line may be erected to serve a group of business establishments. There shall be only one free-standing sign for each building, regardless of the number of businesses conducted in said building.

1222 **Wall Signs Pertaining to Non-Conforming Uses.**

On-premises wall signs pertaining to a non-conforming use shall be permitted on the same premises of such use, provided the area of such sign does not exceed twelve (12) square feet.

1230 **Political Signs.**

No political sign shall be posted in any place or in any manner that is destructive to public property upon posting or removal. No political sign shall be posted in a public right-of-way nor shall any such sign be posted on a utility pole. No political sign shall be posted more than sixty (60) days before an election. All candidates for public office, their campaign committees, or other persons responsible for the posting on public property of campaign material shall remove such material within two weeks following election day.

1240 **Sign Setback Requirements.**

Except as modified in Sections 1241-1244, on-premises signs where permitted shall be set back from the established right-of-way line of any thoroughfare at least ten (10) feet. No off-premises sign shall be erected in front of the required setback line for the appropriate zoning district.

1241 **Increased Setback.**

For every square foot by which any on-premises sign exceeds fifty (50) square feet, the setback shall be increased by one-half ($\frac{1}{2}$) foot but need not exceed one hundred (100) feet.

1242 **Setbacks for Off-Premises Signs.**

If a setback line is not established for the appropriate zoning district, off-premises signs shall be set back a minimum of twenty (20) feet from the right-of-way line.

1243 **Setbacks for Public and Quasipublic Signs.**

Real estate signs and bulletin boards for a church, school or any other public, religious or educational institution may be erected not less than ten (10) feet from the established right-of-way line of any street or highway provided such sign or bulletin board does not obstruct traffic visibility at street or highway intersections.

1244 **Special Yard Provisions.**

On-premises signs where permitted shall be erected or placed in conformity with the side and rear yard requirements of the district in which located, except that in any residential district, on-premises signs shall not be erected or placed within twelve (12) feet of a side or rear lot line. If the requirement for a single side yard in the appropriate zoning district is more than twelve (12) feet, the latter shall apply.

1250 **Limitation.**

For the purposes of this Article, outdoor advertising off-premises signs shall be classified as a business use and be permitted in all districts zoned for manufacturing or business or lands used for agricultural purposes. In addition, regulation of signs along interstate and primary highways shall conform to the requirements of Ohio Revised Code Chapter 5516 and the regulations adopted pursuant thereto.

1260 **Maintenance.**

All signs shall be maintained in safe and sound structural condition at all times and shall be presentable. The Zoning Administrator shall remove any off-premises advertising signs or structure found to be unsafe or structurally unsound within thirty (30) days of issuing a notification. The Zoning Administrator shall remove any on-premises sign which is determined to be unsafe or structurally unsound within ten (10) days of issuance of notification.

1261 **Non-Conforming Signs and Structures.**

Advertising signs and structures in existence prior to the effective date of this Ordinance (Resolution) which violate or are otherwise not in conformance with the provisions of this Article shall be deemed non-conforming. All such legal non-conforming signs and structures shall be maintained in accordance with this Article. The burden of establishing the legal non-conforming status of any advertising sign or structure shall be upon the owner of the sign or structure.

1262 **Loss of Legal Non-Conforming Status.**

A legal non-conforming sign shall immediately lose its legal non-conforming status, and therefore must be brought into conformance with this Article or be removed, if the sign is altered in copy (except for changeable copy signs) or structure; or if it is enlarged, relocated, or replaced; or if it is part of an establishment which discontinues operation for ninety (90) consecutive days; or if it is structurally damaged to an extent greater than one half of its estimated replacement value. Similarly, any legal non-conforming advertising structure so damaged must be brought into compliance or be removed.

1270 **Violations.**

In case any sign shall be installed, erected, constructed, or maintained in violation of any of the terms of this Ordinance (Resolution), the Zoning Inspector shall notify in writing the owner or lessee thereof to alter such sign so as to comply with this Ordinance (Resolution). Failure to comply with any of the provisions of this Article shall be deemed a violation and shall be punishable under Section 1473 of this Ordinance (Resolution). Political signs posted in violation of Section 1230 of this Ordinance (Resolution) are subject to removal by the Zoning Inspector five (5) days after written notice of violation of Sections 1230 has been given.

ARTICLE 13

ADMINISTRATION

1300 Purpose.

This article sets forth the powers and duties of the Planning (Zoning) Commission, the Board of Zoning Appeals, the City Council (Village Council, Board of County Commissioners, Board of Township Trustees), and the Zoning Administrator with respect to the administration of the provisions of this Ordinance (Resolution).

1301 General Provisions.

The formulation, administration and enforcement of this Zoning Ordinance (Resolution) is hereby vested in the following offices and bodies within the City (County, Township) of _____ government:

1. Zoning Administrator
2. Planning (Zoning) Commission
3. Board of Zoning Appeals
4. City Council (Village Council, Township Trustees, County Commissioners)
5. Law Director (County Prosecutor)

1310 Zoning Administrator.

A Zoning Administrator designated by the Mayor (Board of County Commissioners, Board of Township Trustees) shall administer and enforce this Ordinance (Resolution). He may be provided with the assistance of such other persons as the Mayor (Board of County Commissioners, Board of Township Trustees) may direct.

1311 Responsibilities of Zoning Administrator.

For the purpose of this Ordinance (Resolution), the Zoning Administrator shall have the following duties:

1. Enforce the provisions of this Ordinance (Resolution) and interpret the meaning and application of its provisions.
2. Respond to questions concerning applications for amendments to the Zoning Ordinance (Resolution) text and the Official Zoning District Map.

3. Issue zoning permits and certificates of occupancy as provided by this Ordinance (Resolution), and keep a record of same with a notation of any special conditions involved.

4. Act on all applications upon which he is authorized to act by the provisions of this Ordinance (Resolution) within the specified time or notify the applicant in writing of his refusal or disapproval of such application and the reasons therefor. Failure to notify the applicant in case of such refusal or disapproval within the specified time shall entitle the applicant to submit his request to the Board of Zoning Appeals.

5. Conduct inspections of buildings and uses of land to determine compliance with this Ordinance (Resolution), and, in the case of any violation, to notify in writing the person(s) responsible, specifying the nature of the violation and ordering corrective action.

6. Maintain in current status the Official Zoning District Map which shall be kept on permanent display in the city (county, township) offices.

7. Maintain permanent and current records required by this Ordinance (Resolution), including but not limited to zoning permits, zoning certificates, inspection documents, and records of all variances, amendments and special uses.

8. Make such records available for the use of the City Council (Village Council, County Commissioners, Township Trustees), the Planning (Zoning) Commission, the Board of Zoning Appeals, and the public.

9. Review and approve site plans pursuant to this Ordinance (Resolution).

10. Determine the existence of any violations of this Ordinance (Resolution), and cause such notifications, revocation notices, stop orders, or tickets to be issued, or initiate such other administrative or legal action as needed, to address such violations.

11. Prepare and submit an annual report to the City Council (Village Council, County Commissioners, Township Trustees) and Planning (Zoning) Commission on the administration of this Ordinance (Resolution), setting forth such information as may be of interest and value in advancing and furthering the purpose of this Ordinance (Resolution). Such report shall include recommendations concerning the schedule of fees.

1320 **Planning Commission.** (Municipal)

A. **Appointment and Organization.**

The Commission shall be composed of five (5) members* who reside in the incorporated area of the City, and shall include the Mayor, the

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*See ORC Section 713.01 in Appendix C.

Director of Public Safety and Service, and three (3) additional citizens to be appointed by the Mayor. The terms of the citizen members shall be of such length and so arranged that the term of one (1) member will expire every second year.

1321 **Proceedings of Planning Commission. (Municipal)**

The Commission shall adopt rules necessary to the conduct of its affairs in keeping with the provisions of this Ordinance. Commission meetings shall be held at the call of the chairman and at such other times as the Commission may determine. All meetings shall be open to the public. The Commission shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions all of which shall be a public record and be immediately filed in the office of the Commission. The presence of three (3) members shall constitute a quorum. The concurring vote of three (3) members of said Board shall be necessary to reverse an order, requirement, decision, or determination of the Zoning Administrator or the Planning (Zoning) Commission.

1322 **Duties of Planning Commission. (Municipal)**

For the purpose of this Ordinance the Commission shall have the following duties:

1. Recommend the proposed Zoning Ordinance,including text and Official Zoning District Map to the City Council (Village Council) for formal adoption.

2. Initiate advisable Official Zoning District Map changes, or changes in the text of the Zoning Ordinance where same will promote the best interest of the public in general through recommendation to the City Council (Village Council).

3. Review all proposed amendments to the text of this Ordinance and the Official Zoning District Map and make recommendations to the City Council (Village Council) as specified in Article 6.

4. Review all Planned Unit Development Applications and make recommendations to the City Council (Village Council) as provided in this Ordinance.

5. Review all special uses as identified in the respective zoning districts according to provisions and criteria stated in this Ordinance.

6. Carry on a continuous review of the effectiveness and appropriateness of this Ordinance and recommend such changes or amendments as it feels would be appropriate.

1320 to 1322 **Rural Zoning Commission.** (County:See Appendix A, S.303.04 to S.303.12)

1320 to 1322 **Township Zoning Commission.** (Township: See Appendix B, S.519.04 to S.519.12)

1330 **Board of Zoning Appeals. (Municipal)**

A Board of Zoning Appeals is hereby created, which shall consist of five (5) members to be appointed by the Mayor. The term of all member shall be five (5) years and their terms shall be so arranged that the term of one (1) member shall expire each year. Each member shall serve until his successor is appointed and qualified. Members of the Board shall be removable for nonperformance of duty, misconduct in office, or other reasonable cause by the Mayor upon written charges and after a public hearing has been held regarding such charges, a copy of the charges having been served upon the member so charged at least ten (10) days prior to the hearing either personally or by registered mail, or by leaving the same at his place of residence. The member shall be given an opportunity to be heard and answer such charges. Vacancies shall be filled by appointment by the Mayor and shall be for the unexpired term.

1331 **Proceedings of the Board of Zoning Appeals. (Municipal)**

The Board shall adopt rules necessary to the conduct of its affairs in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to votes, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the Board.

Three (3) members of the Board shall constitute a quorum. The Board shall act by resolution, and the concurring vote of three (3) members of the Board shall be necessary to reverse an order of determination of the Zoning Administrator, to decide in favor of an applicant in any matter over which the Board has original jurisdiction under this Ordinance, or to grant any variance from the requirements stipulated in this Ordinance.

1332 **Duties of the Board of Zoning Appeals. (Municipal)**

For the purpose of this Ordinance the Board has the following specific responsibilities:

1. Hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation or determination made by the Zoning Administrator;

2. Authorize such variances from the terms of this Ordinance as will not be contrary to the public interest, where, owing to the special conditions, a literal enforcement of this Ordinance will result in unnecessary hardship, and so that the spirit of this Ordinance shall be observed and substantial justice done.

1330 to 1332 **Board of Zoning Appeals.** (County: See Appendix A, S.303.13 to S.303.15)

1330 to 1332 **Board of Zoning Appeals.** (Township: See Appendix B, S.519.13 to S.519.15)

1340 **Duties of Zoning Administrator, Board of Zoning Appeals, Legislative Authority and Courts on Matters of Appeal.**

It is the intent of this Ordinance (Resolution) that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, and that such questions shall be presented to the Board only on appeal from the decision of the Zoning Administrator, and that recourse from the decisions of the Board shall be to the courts as provided by law. It is further the intent of this Ordinance (Resolution) that the duties of the City Council (Village Council, Board of County Commissioners, Board of Township Trustees) in connection with this Ordinance (Resolution) shall not include hearing and deciding questions of interpretation and enforcement that may arise. The procedure for deciding such questions shall be as stated in this section and this Ordinance (Resolution). Under this Ordinance (Resolution) the City Council (Village Council, Board of County Commissioners, Board of Township Trustees) shall only have the duties of considering and adopting or rejecting proposed amendments or the repeal of this Ordinance (Resolution) as provided by law, and of establishing a schedule of fees and charges as stated in Section 1351 of this Ordinance (Resolution). Nothing in this Ordinance (Resolution) shall be interpreted to prevent any official of the City (Village, County, Township) from appealing a decision of the Board to the courts as provided in Chapters 2505 and 2506 of the Ohio Revised Code. Any such appeal shall be made within ten (10) days of the Board's written decision.

1350 **City Council (Village Council, Board of County Commissioners, Board of Township Trustees).**

The powers and duties of the City Council (Village Council, Board of County Commissioners, Township Trustees) pertaining to the Zoning Ordinance (Resolution) are as follows:

1. Approve the appointments of members to the Planning (Zoning) Commission.

2. Approve the appointments of members to the Zoning Board of Appeals.

3. Initiate or act upon suggested amendments to the Zoning Ordinance (Resolution) text or Official Zoning District Map. Final action upon a suggested zoning amendment shall be undertaken at a public hearing.

4. Override a written recommendation of the Planning (Zoning) Commission on a text or map amendment provided that such legislative action is passed by a vote of not less than three-quarters of the City (Village) Council (by a unanimous vote of the County Commissioners, Township Trustees).

1351 **Schedule of Fees.**

The City Council (Village Council, Board of County Commissioners, Board of Township Trustees) shall by Ordinance (Resolution) establish a schedule of fees for zoning permits, amendments, appeals, variances, conditional use permits, plan approvals, and other procedures and services pertaining to the administration and enforcement of this Ordinance (Resolution), after considering the recommendations of the Zoning Administrator with respect to actual administrative costs, both direct and indirect. The schedule of fees shall be posted in the office of the Zoning Administrator, and may be altered or amended only by the City Council (Village Council, Board of County Commissioners, Board of Township Trustees). Until all such appropriate fees, charges, and expenses have been paid in full, no action shall be taken on any application, appeal, or administrative procedure.

ARTICLE 14

ENFORCEMENT

1400 General

This article stipulates the procedures to be followed in obtaining permits, certificates, and other legal or administrative approvals under this Ordinance (Resolution).

1401 Zoning Permits Required.

No building or other structure shall be erected, moved, added to, structurally altered, nor shall any building, structure, or land be established or changed in use without a permit therefor, issued by the Zoning Administrator. Zoning permits shall be issued only in conformity with the provisions of this Ordinance (Resolution) unless the Zoning Administrator receives a written order from the Board of Zoning Appeals deciding an appeal, conditional use, or variance, or from City Council (Village Council, Board of County Commissioners, Board of Township Trustees) approving a Planned Unit Development District, as provided by this Ordinance (Resolution).

1402 Contents of Application for Zoning Permit.

The application for zoning permit shall be made in writing and be signed by the owner or applicant attesting to the truth and exactness of all information supplied on the application. Each application shall clearly state that the permit shall expire and may be revoked if work has not begun within one (1) year or substantially completed within two and one-half ($2\frac{1}{2}$) years. At a minimum, the application shall contain the following information and be accompanied by all required fees:

1. Name, address, and phone number of applicant;
2. Legal description of property;
3. Existing use;
4. Proposed use;
5. Zoning district;
6. Plans in triplicate drawn to scale, showing the actual dimensions and the shape of the lot to be built upon; the exact size and location of existing buildings on the lot, if any; and the location and dimensions of the proposed building(s) or alteration;

7. Building heights;

8. Number of off-street parking spaces or loading berths, and their layout;

9. Location and design of access drives;

10. Number of dwelling units;

11. If applicable, application for a sign permit or a conditional, special, or temporary use permit, unless previously submitted;

12. Such other documentation as may be necessary to determine conformance with, and to provide for the enforcement of, this Ordinance (Resolution).

1403 **Approval of Zoning Permit.**

Within thirty (30) days after the receipt of an application, the Zoning Administrator shall either approve or disapprove the application in conformance with the provisions of this Ordinance (Resolution). All zoning permits shall, however, be conditional upon the commencement of work within one year. One copy of the plans shall be returned to the applicant by the Zoning Administrator, after the Zoning Administrator shall have marked such copy either as approved or disapproved and attested to same by his signature on such copy. One copy of plans, similarly marked, shall be retained by the Zoning Administrator. The Zoning Administrator shall issue a placard, to be posted in a conspicuous place on the property in question, attesting to the fact that the activity is in conformance with the provisions of this Ordinance (Resolution).

1404 **Submission to Director of Transportation.**

Before any zoning permit is issued affecting any land within three-hundred (300) feet of the centerline of a proposed new highway or a highway for which changes are proposed as described in the certification to local officials by the Director of Transportation or any land within a radius of five-hundred (500) feet from the point of intersection of said centerline with any public road or highway, the Zoning Administrator shall give notice, by registered mail, to the Director of Transportation that he shall not issue a zoning permit for one-hundred twenty (120) days from the date the notice is received by the Director of Transportation. If the Director of Transportation notifies the Zoning Administrator that he shall proceed to acquire the land needed, then the Zoning Administrator shall refuse to issue the zoning permit. If the Director of Transportation notifies the Zoning Administrator that acquisition at this time is not in the public interest, or upon the expiration of the one-hundred twenty (120) day period or of any extension thereof agreed upon by the Director of Transportation and the property owner, the Zoning Administrator shall, if the application is in conformance with all provisions of this Ordinance (Resolution), issue the zoning permit.

1405 **Expiration of Zoning Permit.**

If the work described in any zoning permit has not begun within one year from the date of issuance thereof, said permit shall expire; it shall be revoked by the Zoning Administrator; and written notice thereof shall be given to the persons affected. If the work described in any zoning permit has not been substantially completed within two and one half ($2\frac{1}{2}$) years of the date of issuance thereof, said permit shall expire and be revoked by the Zoning Administrator, and written notice thereof shall be given to the persons affected, together with notice that further work as described in the cancelled permit shall not proceed unless and until a new zoning permit has been obtained or an extension granted.

1410 **Certificate of Occupancy.**

It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure, until a certificate of occupancy shall have been issued therefor by the Zoning Administrator stating that the proposed use of the building or land conforms to the requirements of this Ordinance (Resolution). The issuance of a use certificate in no way relieves the recipient from compliance with all the requirements of this Ordinance (Resolution) and other regulations.

1411 **Temporary Certificate of Occupancy.**

A temporary certificate of occupancy may be issued by the Zoning Administrator for a period not exceeding six (6) months during alterations or partial occupancy of a building pending its completion.

1412 **Record of Zoning Permits and Certificates of Occupancy.**

The Zoning Administrator shall maintain a record of all zoning permits and certificates of occupancy, and copies shall be furnished, upon request and upon payment of the established fee, to any person.

1420 **Failure to Obtain a Zoning Permit or Certificate of Occupancy.**

Failure to obtain a zoning permit or certificate of occupancy shall be a punishable violation of this Ordinance (Resolution).

1430 **Construction and Use to Be as Provided in Applications, Plans, Permits, and Certificates.**

Zoning permits or certificates of occupancy issued on the basis of plans and applications approved by the Zoning Administrator authorize only the

use, and arrangement, set forth in such approved plans and applications or amendments thereto, and no other use, arrangement, or construction. Use, arrangement, or construction contrary to that authorized shall be deemed a punishable violation of this Ordinance (Resolution).

1440 **Complaints Regarding Violations.**

Whenever a violation of this Ordinance (Resolution) occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Zoning Administrator. The Zoning Administrator shall record properly such complaint, immediately investigate it, and take action thereon as provided by this Ordinance (Resolution).

1441 **Entry and Inspection of Property.**

The Zoning Administrator is authorized to make inspections of properties and structures in order to examine and survey the same, at any reasonable hour, for the purpose of enforcing the provisions of this Ordinance (Resolution). Prior to seeking entry to any property or structure for such examination or survey, the Zoning Administrator shall attempt to obtain the permission of the owner or occupant to inspect. If such permission is denied or cannot be obtained, the Zoning Administrator shall request the assistance of the Law Director (County Prosecutor) in securing a valid search warrant prior to entry.

1450 **Stop Work Order.**

Subsequent to his determination that work is being done contrary to this Ordinance (Resolution), the Zoning Administrator shall write a stop work order and post it on the premises involved. Removal of a stop work order, except by the order of the Zoning Administrator, shall constitute a punishable violation of this Ordinance (Resolution).

1460 **Zoning Permit Revocation**

The Zoning Administrator may issue a revocation notice to revoke a permit or administrative approval which was issued contrary to this Ordinance (Resolution) or based upon false information or misrepresentation in the application.

1470 **Notice of Violation.**

Whenever the Zoning Administrator or his agent determines that there is a violation of any provision of this Ordinance (Resolution), a warning tag shall be issued and shall serve as a notice of violation. Such order shall:

a. Be in writing;

b. Identify the violation;

c. Include a statement of the reason or reasons why it is being issued and refer to the sections of this Ordinance (Resolution) being violated; and

d. State the time by which the violation shall be corrected.

Service of notice of violation shall be as follows:

a. By personal delivery to the person or persons responsible, or by leaving the notice at the usual place of residence of the owner with a person of suitable age and discretion; or

b. By certified mail deposited in the United States Post Office addressed to the person or persons responsible at a last known address. If a certified mail envelope is returned with endorsement showing that the envelope is unclaimed, then service shall be sent by ordinary mail, and the mailing shall be evidenced by a certificate of mailing which shall be filed by the Zoning Administrator. Service shall be deemed complete when the fact of mailing is entered of record, provided that the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery; or

c. By posting a copy of the notice form in a conspicuous place on the premises found in violation.

1471 **Ticketing Procedure.**

If, upon re-inspection following the issuance of a notice of violation, the condition has not been corrected, the person or persons responsible shall be issued a ticket. Such ticket shall:

1. Be served personally;

2. Be in writing;

3. Identify the violation;

4. State the time, date and place for appearance in court; and

5. State the amount of the fine payable in lieu of a court appearance.

If the ticket cannot be served personally, the Zoning Administrator shall request that a summons be issued by the Court.

1472 **Penalties and Fines.**

It shall be unlawful to erect, establish, locate, construct, reconstruct, enlarge, change, convert, move, repair, maintain, or structually alter any building, structure or land in violation of any provision of this Ordinance (Resolution) or any amendment thereto. Any person, firm or corporation who violates this Ordinance (Resolution) or fails to comply with any of its requirements shall upon conviction thereof be fined not more than one-hundred (100) dollars and in addition shall pay all costs and expenses involved in the case. Each day such violation continues after receipt of a violation notice shall be considered a separate offense. The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

1473 **Additional Remedies.**

Nothing in this Ordinance (Resolution) shall be deemed to abolish, impair or prevent other additional remedies as provided by law. In the event of a violation of any provision or requirement of this Ordinance (Resolution), or in the case of an imminent threat of such a violation, the Zoning Administrator, the Law Director (Prosecuting Attorney), or the owner of any neighboring property who would be especially damaged by such violation, may, in addition to other recourses provided by law, institute mandamus, injunction, abatement, or other appropriate actions to prevent, remove, abate, enjoin, or terminate such violation.

APPENDIX A

OHIO REVISED CODE

CHAPTER 303: COUNTY RURAL ZONING

Section:

303.01	Definition
303.02	Land use in unincorporated territory
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(303.02.2)	303.022 County may adopt planned unit development regulations
303.03	Adoption of resolution of intention to proceed with county rural zoning
303.04	County rural zoning commission
303.05	Recommendations of county rural zoning commission; organization, powers and compensation of commission
303.06	Public hearing on recommendations; notice
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303.10	County commissioners to vote upon adoption of resolution
303.11	Zoning plan to be submitted to electors
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303.13	County board of zoning appeals; compensation and expenses
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303.15	Rules, organization and meetings of zoning appeals board; procedure for appeals to board; notice and hearings
303.16	Enforcement of zoning regulations; county zoning inspector
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303.19	Nonconforming use of buildings and land not affected by zoning
303.20	Outdoor advertising classified as business use
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303.22	Township zoning regulations to take precedence
303.23	Violation of resolution and regulations
303.24	Actions instituted to prevent violation
303.25	County zoning plan repeal in township; procedure
303.99	Penalty

S. 303.01 Definition

As used in sections 303.02 to 303.25, inclusive, of the Revised Code, "agriculture" includes agriculture, farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture, and animal and poultry husbandry.

S. 303.02 Land use in unincorporated territory

For the purpose of promoting the public health, safety, and morals, the board of county commissioners may in accordance with a comprehensive plan regulate by resolution the location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas which may be occupied, set back building lines, sizes of yards, courts, and other open spaces, the density of population, the uses of buildings and other structures including tents, cabins, and trailer coaches and the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of such county, and for such purposes may divide all or any part of the unincorporated territory of the county into districts or zones of such number, shape, and area as the board determines. All such regulations shall be uniform, for each class or kind of building or other structure or use, throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones.

(S. 303.02.1) S. 303.021 Designation of street names; assignment of numbers to buildings

The board of county commissioners may designate street names and assign numbers to buildings along streets in unincorporated areas. The owners of such buildings shall number or renumber such buildings in accordance with the numbers assigned by the county commissioners.

(S. 303.02.2) S. 303.022 County may adopt planned unit development regulations

A county zoning resolution or amendment adopted in accordance with Chapter 303. of the Revised Code may establish or modify planned unit development regulations, for the purpose of conserving land through more efficient allocation of private lots, multi-family dwelling units, common grounds, and nonresidential uses, promoting greater efficiency in providing public and utility services, and securing the benefits of new techniques of community development and renewal. Within a planned unit residential development district or zone, the county zoning, subdivision and platting regulations need not be uniform, but may vary in order to promote the public health, safety, and morals, and the other purposes of this section. County regulations adopted pursuant to this section may require developers to obtain conditional or final certification of compliance with county zoning, subdivision, or platting regulations at specified stages of development.

As used in this section, "planned unit development" means a development which is planned to integrate residential use with collateral uses, and in which lot size, setback lines, yard areas, and dwelling types may be varied and modified to achieve particular design objectives and make provision for open spaces, common areas, utilities, public improvements, and collateral nonresidential uses.

S. 303.03 Adoption of resolution of intention to proceed with county rural zoning (GC S.3180-2)

Before availing itself to the powers conferred in section 303.02 of the Revised Code, the board of county commissioners shall pass a resolution declaring its intention to proceed under sections 303.01 to 303.25, inclusive, of the Revised Code. The board may act in the following manner:

(A) It may adopt such a resolution upon its own initiative.

(B) It shall adopt such a resolution if there is presented to it a petition, signed by a number of qualified voters residing in the unincorporated area of each township or part thereof to be included in the zoning plan equal to not less than eight per cent of the total vote cast for all candidates for governor in such area at the last preceding general election at which a governor was elected, requesting the board to proceed with county rural zoning under such sections.

S. 303.04 County rural zoning commission

The board of county commissioners of any county proceeding under sections 303.01 to 303.25, inclusive, of the Revised Code, shall create and establish a county rural zoning commission. The commission shall be composed of five members who reside in the unincorporated area of the county to be zoned, to be appointed by the board, and the terms of the members shall be of such length and so arranged that the term of one member will expire each year. Where there is a county or regional planning commission the board of county commissioners may appoint qualified members of such commission who reside in the unincorporated area of the county to serve on the county rural zoning commission. Each member shall serve until his successor is appointed and qualified. Members of the zoning commission shall be removable for nonperformance of duty, misconduct in office, or other cause by the board, upon written charges being filed with the board, after a public hearing has been held regarding such charges, and after a copy of the charges has been served upon the member so charged at least ten days prior to the hearing, either personally, by registered mail, or by leaving such copy at his usual place of residence. The member shall be given an opportunity to be heard and answer such charges. Vacancies shall be filled by the board and shall be for the unexpired term.

S. 303.05 Recommendations of county rural zoning commission; organization, powers and compensation of commission

The county rural zoning commission shall submit a plan, including both text and maps, representing the recommendations of the zoning commission for the carrying out by the board of county commissioners of the powers, purposes, and provisions set forth in sections 303.01 to 303.99, inclusive, of the Revised Code, including additions to territory in which a county zoning plan is in effect.

The zoning commission may, within the limits of the moneys appropriated by the board for the purpose, employ or contract with such planning consultants and executive and other assistants as it deems necessary except that where a county or regional planning commission is established, the zoning commission shall use the same planning consultants and executive and other assistants as provided for such county or regional planning commission if so ordered by the board. The zoning commission shall organize, adopt rules for the transaction of its business, and keep a record of its actions and determinations. Members of the zoning commission may be allowed their expenses, or such compensation, or both, as the board may approve and provide. No county commissioner shall be employed by the zoning commission of his county.

The zoning commission shall make use of such information and counsel as is available from appropriate public officials, departments, and agencies and such officials, departments, and agencies having information, maps and data pertinent to county rural zoning shall make them available for the use of the zoning commission.

In any county where there is a county or regional planning commission, the zoning commission shall request such planning commission to prepare or make available to the zoning commission a zoning plan, including text and maps, for the unincorporated area of the county or any portion of the same.

S. 303.06 Public hearing on recommendations; notice

Before certifying its recommendations of a zoning plan to the board of county commissioners, the county rural zoning commission shall hold at least one public hearing in each township affected by the proposed zoning plan, notice of which shall be given by one publication in one or more newspapers of general circulation in the township at least thirty days before the date of such hearing. The notice shall state the place and time at which the text and maps of the proposed zoning resolution may be examined.

S. 303.07 Submission of proposed zoning resolution to county or regional planning commission (GC S.3180-6)

Following the hearing provided for in section 303.06 of the Revised Code, the county rural zoning commission shall submit the proposed zoning resolution, including text and maps, to the county or regional planning commission of the county or district in which the county is located, if there is such a commission, for approval, disapproval, or suggestions.

The approval of the planning commission shall be conclusively presumed unless, within twenty days after receiving the proposed zoning resolution, it notifies the zoning commission to the contrary.

In the event the planning commission disapproves of the proposed zoning resolution or suggests any material change, the zoning commission shall hold a public hearing on the resolution in each township affected by the proposed changes, due notice of which shall be given as provided in section 303.06 of the Revised Code. When the zoning commission has completed its recommendations for a zoning plan it shall certify the plan to the board of county commissioners.

S. 303.08 Public hearing on zoning plan (GC S.3180-7)

After receiving the certification of a zoning plan from the county rural zoning commission, and before adoption of any such zoning resolution, the board of county commissioners shall hold a public hearing on the resolution, at least thirty days' notice of the time and place of which shall be given by one publication in a newspaper of general circulation in the county.

S. 303.09 Changes in text or maps; second hearing

No change in or departure from the text or maps as certified by the county rural zoning commission, shall be made by the board of county commissioners unless it is first resubmitted to the county rural zoning commission for approval, disapproval, or suggestions. Upon receipt of the recommendations of the county rural zoning commission regarding the proposed changes, the board of county commissioners shall hold a second public hearing, at least ten days notice of the time and place of which shall be given by one publication in one or more newspapers of general circulation in the townships affected. If such changes are disapproved by the zoning commission, the provision so disapproved must receive the favorable vote of the entire membership of the board of county commissioners in order to be adopted.

S. 303.10 County commissioners to vote upon adoption of resolution (GC S.3180-9)

After receiving the recommended zoning plan from the county rural zoning commission and holding the public hearing provided for by section 303.08 of the Revised Code, the board of county commissioners shall consider such recommendations and vote upon the adoption of the zoning resolution.

S. 303.11 Zoning plan to be submitted to electors

If the zoning resolution is adopted by the board of county commissioners, such board shall cause the question of whether or not the proposed plan of zoning shall be put into effect to be submitted to the electors residing in the unincorporated area of the county included in the proposed plan of zoning for their approval or rejection at the next primary or general election, or a special election may be called for this purpose. Such resolution shall be filed with the board of elections not later than four p.m. on the seventy-fifth day before the day of the election. No zoning regulations shall be put into effect in any township, unless a majority of the vote cast on the issue in that township is in favor of the proposed plan of zoning. Upon certification by the board of elections the resolution shall take immediate effect in all townships which voted approval, eliminating from the plan any township which did not vote approval.

S. 303.12 Amendments to zoning resolution; notices and hearings; referendum

(A) Amendments to the zoning resolution may be initiated by motion of the county rural zoning commission, by the passage of a resolution therefor by the board of county commissioners or by the filing of an application therefor by one or more of the owners or lessees of property within the area proposed to be changed or affected by the proposed amendment with the county rural zoning commission. The board of county commissioners may require that the owner or lessee of property filing an application to amend the zoning resolution pay a fee therefor to defray the cost of advertising, mailing, and other expenses. If the board of county commissioners requires such a fee, it shall be required generally, for each application. The board of county commissioners shall upon the passage of such resolution certify it to the county rural zoning commission.

Upon the adoption of such motion, or the certification of such resolution or the filing of such application, the county rural zoning commission shall set a date for a public hearing thereon, which date shall not be less than twenty nor more than forty days from the date of adoption of such motion or the date of the certification of such resolution or the date of the filing of such application. Notice of such hearing shall be given by the county rural zoning commission by one publication in one or more newspapers of general circulation in each township affected by such proposed amendment or supplement at least ten days before the date of such hearing.

(B) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land, as listed on the county auditor's current tax list, written notice of the hearing shall be mailed by the zoning commission, by first class mail, at least ten days before the date of the public hearing to all owners of property within and contiguous to and directly across the street from such area proposed to be rezoned or redistricted to the addresses of such owners appearing on the county auditor's current tax list. The failure of delivery of such notice shall not invalidate any such amendment.

(C) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the county auditor's current tax list, the published and mailed notices shall set forth the time, date, and place of the public hearing, and shall include all of the following:

(1) The name of the zoning commission that will be conducting the public hearing;

(2) A statement indicating that the motion, resolution or application is an amendment to the zoning resolution;

(3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of these properties, as they appear on the county auditor's current tax list;

(4) The current zoning classification of property named in the proposed amendment and the proposed zoning classification of such property;

(5) The time and place where the motion, resolution, or application proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the public hearing;

(6) The name of the person responsible for giving notice of the public hearing by publication or by mail, or by both publication and mail;

(7) Any other information requested by the zoning commission;

(8) A statement that after the conclusion of such hearing the matter will be submitted to the board of county commissioners for its action.

(D) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land, as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing, and shall include all of the following:

(1) The name of the zoning commission that will be conducting the public hearing on the proposed amendment;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the public hearing;

(4) The name of the person responsible for giving notice of the public hearing by publication;

(5) A statement that after the conclusion of such hearing the matter will be submitted to the board of county commissioners for its action;

(6) Any other information requested by the zoning commission.

Hearings shall be held in the county courthouse or in a public place designated by the zoning commission.

(E) Within five days after the adoption of such motion or the certification of such resolution or the filing of such application the county rural zoning commission shall transmit a copy thereof together with text and map pertaining thereto to the county or regional planning commission, if there is such a commission.

The county or regional planning commission shall recommend the approval or denial of the proposed amendment or the approval of some modification thereof and shall submit such recommendation to the county rural zoning commission. Such recommendation shall be considered at the public hearing held by the county rural zoning commission on such proposed amendment.

The county rural zoning commission shall, within thirty days after such hearing, recommend the approval or denial of the proposed amendment, or the approval of some modification thereof and shall submit such recommendation together with such application or resolution, the text and map pertaining thereto and the recommendation of the county or regional planning commission thereon to the board of county commissioners.

The board of county commissioners shall, upon receipt of such recommendation, set a time for a public hearing on such proposed amendment, which date shall be not more than thirty days from the date of the receipt of such recommendation from the county rural zoning commission. Notice of such public hearing shall be given by the board of one publication in one or more newspapers of general circulation in the county, at least ten days before the date of such hearing.

(F) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing and shall include all of the following:

(1) The name of the board that will be conducting the public hearing;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of these properties, as they appear on the county auditor's current tax list;

(4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of such property;

(5) The time and place where the motion, application, or resolution proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the public hearing;

(6) The name of the person responsible for giving notice of the public hearing by publication or by mail, or by both publication and mail;

(7) Any other information requested by the board.

(G) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing, and shall include all of the following:

(1) The name of the board that will be conducting the public hearing on the proposed amendment;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the public hearing;

(4) The name of the person responsible for giving notice of the public hearing by publication;

(5) Any other information requested by the board.

(H) Within twenty days after such public hearing the board shall either adopt or deny the recommendation of the zoning commission or adopt some modification thereof. In the event the board denies or modifies the recommendation of the county rural zoning commission the unanimous vote of the board shall be required.

Such amendment adopted by the board shall become effective in thirty days after the date of such adoption unless within thirty days after the adoption of the amendment there is presented to the board of county commissioners a petition, signed by a number of qualified voters residing in the unincorporated area of the township or part thereof included in the zoning plan equal to not less than eight per cent of the total vote cast for all candidates for governor in such area at the last preceding general election at which a governor was elected, requesting the board to submit the amendment to the electors of such area, for approval or rejection, at a special election to be held on the day of the next primary or general election. Each part of this petition shall contain the number and the full and correct title, if any, of the zoning amendment resolution, motion, or application, furnishing the name by which the amendment proposal is known and a brief summary of its contents. In addition to meeting the requirements of this section, each petition shall be governed by the rules specified in section 3501.38 of the Revised Code.

The form of a petition calling for a zoning referendum and the statement of the circulator shall be substantially as follows:

"PETITION FOR ZONING REFERENDUM"

(if the proposal is identified by particular name or number, or both, these should be inserted here) _____.

A proposal to amend the zoning map of the unincorporated area of _____ _____ Township, _____ County, Ohio, adopted _____ (date) _____ followed by brief summary of the proposal.

To the Board of County Commissioners of _____ County, Ohio:

We, the undersigned, being electors residing in the unincorporated area of _____ _____ Township, included within the _____ County Zoning Plan, equal to not less than eight percent of the total vote cast for all candidates for governor in the area at the preceding general election at which a governor was elected, request the Board of County Commissioners to submit this amendment of the zoning resolution to the electors of _____ Township residing within the unincorporated area of the township included in the _____ County Zoning Resolution, for approval or rejection at a special election to be held on the day of the next primary or general election to be held on _____ (date) _____ pursuant to section 303.12 of the Revised Code.

Signature, Street Address, Township, Precinct, County, Date of Signing.
or R.F.D.

_____

_____

STATEMENT OF CIRCULATOR

_____ (name of circulator)
declares under penalty of election falsification that he is an elector of the state of Ohio and resides at the address appearing below his signature hereto; that he is the circulator of the foregoing part petition containing _____ (number) _____ signatures; that he witnessed the affixing of every signature; that all signers were to the best of his knowledge and belief qualified to sign; and that every signature is to the best of his knowledge and belief the signature of the person whose signature it purports to be.

_____
(Signature of circulator)

_____
(Address)

_____
(City, village or township, and zip code)

The Penalty for election falsification is imprisonment for not more than six months, or a fine of not more than one thousand dollars, or both.

No amendment for which such referendum vote has been requested shall be put into effect unless a majority of the vote cast on the issue is in favor of the amendment. Upon certification by the board of elections that the amendment has been approved by the voters it shall take immediate effect.

(S.303.12.1) S.303.121 Ratification of amendments to county rural zoning plan

All amendments or supplements to a county rural zoning plan adopted by a board of county commissioners prior to the effective date of this act, except those amendments or supplements which a court of competent jurisdiction has declared unlawful or unreasonable or which are the subject of an action now pending in such a court, are hereby ratified and shall be valid amendments or supplements to such rural zoning plan regardless of the procedure followed with respect to such amendments or supplements prior to their adoption by a board of county commissioners, except that no right of appeal on the issue of the unlawful or unreasonable character of an amendment or supplement shall be lost by the provisions of this section.

S. 303.13 County board of zoning appeals; compensation and expenses

In any county which adopts zoning regulations the board of county commissioners shall appoint a county board of zoning appeals of five members who shall be residents of the unincorporated territory in the county included in the area zoned, not more than two of whom shall be from any one township if the area includes three or more townships. The terms of all members shall be of such length and so arranged that the term of one member will expire each year. Each member shall serve until his successor is appointed and qualified. Members may be removed for the same causes and in the same manner as provided by section 303.04 of the Revised Code. Vacancies shall be filled by the board of county commissioners and shall be for the unexpired term. The members may be allowed their expenses or compensation, or both, as the board of county commissioners may approve and provide.

The board of zoning appeals may, within the limits of the moneys appropriated by the board of county commissioners for the purpose, employ such executive, professional, technical, and other assistants as it deems necessary.

S. 303.14 Powers of county board of zoning appeals

The county board of zoning appeals may:

(A) Hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of section 303.01 to 303.25 of the Revised Code, or of any resolution adopted pursuant thereto;

(B) Authorize upon appeal, in specific cases, such variance from the terms of the zoning resolution as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the resolution will result in unnecessary hardship, and so that the spirit of the resolution shall be observed and substantial justice done;

(C) Grant conditional zoning certificates for the use of land, buildings, or other structures if such certificates for specific uses are provided for in the zoning resolution;

D) Revoke an unauthorized variance or conditional zoning certificate granted for the extraction of minerals, if any condition of the variance or certificate is violated.

The board shall notify the holder of the variance or certificate by certified mail of its intent to revoke the variance or certificate under division (D) of this section and of his right to a hearing before the board within thirty days of the mailing of the notice if he so requests. If the holder requests a hearing, the board shall set a time and place for the hearing and notify the holder. At the hearing, the holder may appear in person, by his attorney, or by other representative or he may present his position in writing. He may present evidence and examine witnesses appearing for or against him. If no hearing is requested, the board may revoke the variance or certificate without a hearing. The authority to revoke a variance or certificate is in addition to any other means of zoning enforcement provided by law.

In exercising the above-mentioned powers, such board may, in conformity with such sections, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end has all powers of the officer from whom the appeal is taken.

S. 303.15 Rules, organization and meetings of zoning appeals board; procedure for appeals to board; notice and hearing.

The county board of zoning appeals shall organize and adopt rules in accordance with the zoning resolution. Meetings of the board of zoning appeals shall be held at the call of the chairman, and at such other times as the board determines. The chairman, or in his absence the acting chairman, may administer oaths, and the board of zoning appeals may compel the attendance of witnesses. All meetings of the board of zoning appeals shall be open to the public. The board of zoning appeals shall keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board of county commissioners and be a public record.

Appeals to the board of zoning appeals may be taken by any person aggrieved or by any officer of the county affected by any decision of the administrative officer. Such appeal shall be taken within twenty days after the decision by filing, with the officer from whom the appeal is taken and with the board of zoning appeals, a notice of appeal specifying the grounds. The officer from whom the appeal is taken shall transmit to the board of zoning appeals all the papers constituting the record upon which the action appealed from was taken.

The board of zoning appeals shall fix a reasonable time for the public hearing of the appeal, give at least ten days notice in writing to the parties in interest, give notice of such public hearing by one publication in one or more newspapers of general circulation in the county at least ten days before the date of such hearing and decide the appeal within a reasonable time after it is submitted. Upon the hearing, any person may appear in person or by attorney.

S. 303.16 Enforcement of zoning regulations; county zoning inspector (GC S.3180-15)

For the purpose of enforcing the zoning regulations, the board of county commissioners may provide for a system of zoning certificates, and for this purpose may establish and fill the position of county zoning inspector, together with such assistants as the board deems necessary, fix the compensation for such positions, and make disbursements for them. In any county in which a county building inspector has been appointed in accordance with section 307.38 of the Revised Code, such official shall be the county zoning inspector for the purposes of sections 303.01 to 303.25, inclusive, of the Revised Code.

S. 303.17 Zoning certificate required (GS S.3180-16)

No person shall locate, erect, construct, reconstruct, enlarge, or structurally alter any building or structure within the territory included in a zoning resolution without obtaining a zoning certificate, if required under section 303.16 of the Revised Code, and no such zoning certificate shall be issued unless the plans for the proposed building or structure fully comply with the zoning regulations then in effect.

S. 303.18 County regulations inapplicable to municipal territory except for period after incorporation or annexation

Regulations enacted by a board of county commissioners under sections 303.01 to 303.25, inclusive, of the Revised Code, shall not apply within municipal corporations, except that where county territory, subject to such regulations, is incorporated, such regulations shall apply therein and be enforced by the county officials until the election and qualification of the officers for the newly incorporated territory, and for not to exceed ninety days thereafter, to enable the officers of the newly incorporated territory to adopt zoning regulations. Upon annexation of county territory to an existing municipal corporation, the zoning regulations then in effect shall remain in full force and shall be enforced by county officials until the legislative authority of said municipal corporation shall either officially adopt the existing zoning regulations or new regulations for such territory.

S. 303.19 Nonconforming use of buildings and land not affected by zoning (GC S.3180-18)

The lawful use of any dwelling, building, or structure and of any land or premises, as existing and lawful at the time of enactment of a zoning resolution or amendment thereto, may be continued, although such use does not conform with the provisions of such resolution or amendment, but if any such nonconforming use is voluntarily discontinued for two years or more, any future use of land shall be in conformity with sections 303.01 to 303.25, inclusive, of the Revised Code. The board of county commissioners shall provide in any zoning resolution for the completion, restoration, reconstruction, extension, or substitution of nonforming uses upon such reasonable terms as are set forth in the zoning resolution.

S. 303.20 Outdoor advertising classified as business use (GC S.3180-19)

For the purposes of sections 303.01 to 303.25, inclusive, of the Revised Code, outdoor advertising shall be classified as a business use and be permitted in all districts zoned for industry, business, trade, or lands used for agricultural purposes.

S. 303.21 Powers not conferred by chapter

(A) Except as otherwise provided in division (B) of this section, sections 303.01 to 303.25 of the Revised Code do not confer any power on any county rural zoning commission, board of county commissioners, or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, and no zoning certificate shall be required for any such building or structure.

(B) A county zoning resolution, or an amendment to such resolution, may in any platted subdivision approved under section 711.05, 711.09, or 711.10 of the Revised Code, or in any area consisting of fifteen or more lots approved under section 711.131 [711.13.1] of the Revised Code that are contiguous to one another, or some of which are contiguous to one another and adjacent to one side of a dedicated public road, and the balance of which are contiguous to one another and adjacent to the opposite side of the same dedicated public road regulate;

(1) Agriculture on lots of one acre or less;

(2) Buildings or structures incident to the use of land for agricultural purposes on lots greater than one acre but not greater than five acres by: set back building lines; height; and size;

(3) Dairying and animal and poultry husbandry on lots greater than one acre but not greater than five acres when at least thirty-five per cent of the lots in the subdivision are developed with at least one building, structure, or improvement that is subject to real property taxation or that is subject to the tax on manufactured homes under section 4503.06 of the Revised Code. After thirty-five per cent of the lots are so developed, dairying and animal and poultry husbandry shall be considered nonconforming use of land and buildings or structures pursuant to section 303.19 of the Revised Code.

Division (B) of this section confers no power on any county rural zoning commission, board of county commissioners, or board of zoning appeals to regulate agriculture, buildings or structures, and dairying and animal and poultry husbandry on lots greater than five acres.

(C) Such sections confer no power on any board of county commissioners, county rural zoning commission, or board of zoning appeals to prohibit in a district zoned for agricultural, industrial, residential, or commercial uses, the use of any land for a farm market where fifty per cent or more of the gross income received from the market is derived from produce raised on farms owned or operated by the market operator in a normal crop year. However, a board of county commissioners, as provided in section 303.02 of the Revised Code, may regulate such factors pertaining to farm markets as size of the structure, size of parking areas that may be required, set back building lines, and egress or ingress, where such regulation is necessary to protect the public health and safety.

(S. 303.21.1) S. 303.211 Limitations on zoning powers

Sections 303.01 to 303.25 of the Revised Code do not confer any power on any board of county commissioners or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad for the operation of its business.

Such sections confer no power on any county rural zoning commission, board of county commissioners, or board of zoning appeals to prohibit the sale or use of alcoholic beverages in areas where the establishment and operation of any retail business, hotel, lunchroom, or restaurant is permitted.

Such sections do not confer any power on any county rural zoning commission, board of county commissioners, or board of zoning appeals to prohibit the use of any land owned or leased by an industrial firm for the conduct of oil or natural gas well drilling or production activities or the location of associated facilities or equipment when such oil or natural gas obtained by the industrial firm is used for the operation of its own plants.

S. 303.22 Township zoning regulations to take precedence (GC S.3180-22)

Where the people of any township or part thereof have approved township zoning regulations in accordance with sections 519.02 to 519.25, inclusive, of the Revised Code, prior to the adoption of a county rural zoning resolution by the board of county commissioners, and the county plan includes any area covered by the township zoning plan, the zoning resolution adopted by the board of township trustees shall take precedence over the zoning resolution adopted by the board of county commissioners, unless a majority of the voters in such zoned area of the township voting on the issue have voted to have the township plan of zoning replaced with the plan of county rural zoning.

S. 303.23 Violation of resolution and regulations (GC S.3180-23)

No person shall locate, erect, construct, reconstruct, enlarge, change, maintain, or use any building or use any land in violation of a resolution, or amendment or supplement to such resolution, adopted by any board of county commissioners under section 303.01 to 303.25, inclusive, of the Revised Code. Each day's continuation of such violation is a separate offense.

S. 303.24 Actions instituted to prevent violation (GC S.3180-24)

In case any building is or is proposed to be located, erected, constructed, reconstructed, enlarged, changed, maintained, or used, or any land is or is proposed to be used in violation of sections 303.01 to 303.25, inclusive, of the Revised Code, or of any regulation or provision adopted by any board of county commissioners under such sections, such board, the prosecuting attorney of the county, the county zoning inspector, the county building inspector, or any adjacent or neighboring property owner who would be specially damaged by such violation, in addition to other remedies provided by law, may institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful location, erection, construction, reconstruction, enlargement, change, maintenance, or use.

S. 303.25 County zoning plan repeal in township; procedure

In any township in which there is in force a plan of county zoning, the plan may be repealed by the board of county commissioners, as to such township, in the following manner:

(A) The board may adopt a resolution upon its own initiative.

(B) The board shall adopt a resolution, if there is presented to it a petition, similar in all relevant aspects to that prescribed in section 303.12 of the Revised Code, signed by a number of qualified voters residing in the unincorporated area of such township included in the zoning plan equal to not less than eight per cent of the total vote cast for all candidates for governor in such area at the last preceding general election at which a governor was elected, requesting the question of whether or not the plan of zoning in effect in such township shall be repealed, to be submitted to the electors residing in the unincorporated area of the township included in the zoning plan at a special election to be held on the day of the next primary or general election. The resolution adopted by the board of county commissioners to cause such question to be submitted to the electors shall be certified to the board of elections not later than seventy-five days prior to the day of election at which the question is to be voted upon. In the event a majority of the vote cast on such question in the township is in favor of repeal of zoning, then such regulations shall no longer be of any effect. Not more than one election shall be held in any two calendar years.

S. 303.99 Penalty

(a) Whoever violates sections 303.01 to 303.25, inclusive of the Revised Code, shall be fined not more than one hundred dollars for each offense.

APPENDIX B

OHIO REVISED CODE

CHAPTER 519: TOWNSHIP ZONING

Section:

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S. 519.01 Definition

As used in sections 519.02 to 519.25, inclusive, of the Revised Code, "agriculture" includes agriculture, farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture, and animal and poultry husbandry.

S. 519.02 Township trustees may regulate building and land use in unincorporated territory for public purpose

For the purpose of promoting the public health, safety, and morals, the board of township trustees may in accordance with a comprehensive plan regulate by resolution the location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas which may be occupied, set back building lines, sizes of yards, courts, and other open spaces, the density of population, the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of such township, and for such purposes may divide all or any part of the unincorporated territory of the township into districts or zones of such number, shape, and area as the board determines. All such regulations shall be uniform for each class or kind of building or other structure or use throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones.

(S. 519.02.1) S.519.021 Township may adopt planned-unit development regulations

A township zoning resolution or amendment adopted in accordance with Chapter 519. of the Revised Code may establish or modify planned-unit development regulations, for the purpose of conserving land through more efficient allocation of private lots, multi-family dwelling units, common grounds, and nonresidential uses, promoting greater efficiency in providing public and utility services and receiving the benefits of new techniques of community development and renewal. Within a planned-unit residential development district or zone, the township zoning regulations need not be uniform, but may vary in order to promote the public health, safety, morals, and the other purposes of this section.

As used in this section, "planned-unit development" means a development which is planned to integrate residential use with collateral uses, and in which lot size, setback lines, yard areas, and dwelling types may be varied and modified to achieve particular design objectives and make provision for open spaces, common areas, utilities, public improvements, and collateral non-residential uses.

S. 519.03 Adoption of resolution of intention to proceed with township zoning

Before availing itself of the powers conferred by section 519.02 of the Revised Code, the board of township trustees shall pass a resolution declaring its intention to proceed under sections 519.02 and 519.25, inclusive, of the Revised Code. The board may act in the following manner:

(A) It may adopt such a resolution upon its own.

(B) It shall adopt a resolution if there is presented to it a petition signed by a number of qualified voters residing in the unincorporated area of the township or part thereof to be included in the zoning plan equal to not less than eight percent of the total vote cast for all candidates for governor in such area at the last preceding general election at which a governor was elected, requesting the board to proceed with township zoning under such sections.

S. 519.05 Recommendations of township zoning commission; organization, powers and compensation of commission

The township rural zoning commission shall submit a plan, including both text and maps, representing the recommendations of the zoning commission for the carrying out by the board of township trustees for the powers, purposes, and provisions set forth in sections 519.01 to 519.99, inclusive, of the Revised Code, including additions to territory in which a township zoning plan is in effect.

The zoning commission may, within the limits of the moneys appropriated by the board for the purpose, employ or contract with such planning consultants and executive and other assistants as it deems necessary. The zoning commission shall organize, adopt rules for the transaction of its business, and keep a record of its actions and determinations. Members of the zoning commission may be allowed their expenses, or such compensation, or both, as the board may approve and provide. No township trustee shall be employed by the zoning commission of his township.

The zoning commission shall make use of such information and counsel as is available from appropriate public officials, departments, and agencies and such officials, departments; and agencies having information, maps, and data pertinent to township zoning shall make them available for the use of the zoning commission.

In any county where there is a county or regional planning commission, the zoning commission may request such planning commission to prepare or make available to the zoning commission a zoning plan, including text and maps for the unincorporated area of the township or any portion of the same.

S. 519.06 Public hearings on recommendations; notice

Before certifying its recommendations of a zoning plan to the board of township trustees, the township zoning commission shall hold at least one public hearing, notice of which shall be given by one publication in one or more newspapers of general circulation in the township at least thirty days before the date of such hearing. The notice shall state the place and time at which the text and maps of the proposed zoning resolution may be examined.

S. 519.07 Proposed zoning resolution to county or regional planning commission; approval; public hearing if resolution disapproved; certification of township trustees

Following the hearing provided for in section 519.06 of the Revised Code the township zoning commission shall submit the proposed zoning resolution, including text and maps, to the county or regional planning commission of the county or district in which the township is located, if there is such a commission, for approval, disapproval, or suggestions.

The approval of the planning commission shall be conclusively presumed unless, within twenty days after receiving the proposed zoning resolution, it notifies the zoning commission to the contrary.

In the event the planning commission disapproves of the proposed zoning resolution or suggests any material change, the zoning commission shall hold a public hearing on the resolution, due notice of which shall be given as provided in section 519.06 of the Revised Code. When the zoning commission has completed its recommendations for a zoning plan it shall certify the plan to the board of township trustees.

S. 519.08 Public hearing on zoning plan

After receiving the certification of a zoning plan from the township zoning commission, and before adoption of any zoning resolution, the board of township trustees shall hold a public hearing on the resolution, at least thirty days notice of the time and place of which shall be given by one publication in a newspaper of general circulation in the township.

S. 519.09 Changes in text or maps; second hearing

No change in or departure from the text or maps, as certified by the township zoning commission, shall be made by the board of township trustees unless it is first resubmitted to the commission for approval, disapproval, or suggestions. Upon receipt of the recommendations of the township rural zoning commission regarding the proposed changes, the board of township trustees shall hold a second public hearing, at least ten days notice of the time and place of which shall be given by one publication in one or more newspapers of general circulation in the township affected. If such changes are disapproved by the zoning commission, the provision so disapproved must receive the favorable vote of the entire membership of the board of township trustees in order to be adopted.

S. 519.10 Trustees to vote upon adoption of resolution

After receiving the recommended zoning plan from the township zoning commission and holding the public hearing provided for by section 519.03 of the Revised Code, the board of township trustees shall consider such recommendations and vote upon the adoption of the zoning resolution.

S. 519.11 Zoning plan to be submitted to electors; majority vote required for approval

If the zoning resolution is adopted by the board of township trustees, such board shall cause the question of whether or not the proposed plan of zoning shall be put into effect to be submitted to the electors residing in the unincorporated area of the township included in the proposed plan of zoning for their approval or rejection at the next primary or general election, or a special election may be called for this purpose. Such resolution shall be filed with the board of elections not later than four p.m. of the seventy-fifth day before the day of the election. No zoning regulations shall be put into effect unless a majority of the vote cast on the issue is in favor of the proposed plan of zoning. Upon certification by the board of elections the resolution shall take immediate effect, if the plan was so approved.

S. 519.12 Amendments to zoning resolution; procedure; referendum

(A) Amendments to the zoning resolution may be initiated by motion of the township zoning commission, by the passage of a resolution therefor by the board of township trustees, or by the filing of an application therefor by one or more of the owners or lessees of property within the area proposed to be changed or affected by the proposed amendment with the township zoning commission. The board of township trustees may require that the owner or lessee of property filing an application to amend the zoning resolution pay a fee therefore to defray the cost of advertising, mailing, and other expenses. If the township trustees require such a fee, it shall be required generally, for each application. The board of township trustees shall upon the passage of such resolution certify it to the township zoning commission.

Upon the adoption of such motion, or the certification of such resolution or the filing of such application, the township zoning commission shall set a date for a public hearing thereon, which date shall not be less than twenty nor more than forty days from the date of the certification of such resolution or the date of adoption of such motion or the date of the filing of such application. Notice of such hearing shall be given by the township zoning commission by one publication in one or more newspapers of general circulation in the township at least ten days before the date of such hearing.

(B) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land, as listed on the county auditor's current tax list, written notice of the hearing shall be mailed by the zoning commission, by first class mail, at least twenty days before the date of the public hearing to all owners of property within and contiguous to and directly across the street from such area proposed to be rezoned or redistricted to the addresses of such owners appearing on the county auditor's current tax list. The failure of delivery of such notice shall not invalidate any such amendment.

(C) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the county auditor's current tax list, the published and mailed notices shall set forth the time, date, and place of the public hearing, and shall include all of the following:

(1) The name of the zoning commission that will be conducting the public hearing;

(2) A statement indicating that the motion, resolution, or application is an amendment to the zoning resolution;

(3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and the names of owners of these properties, as they appear on the county auditor's current tax list;

(4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of such property;

(5) The time and place where the motion, resolution, or application proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the public hearing;

(6) The name of the person responsible for giving notice of the public hearing by publication or by mail, or by both publication and mail;

(7) Any other information requested by the zoning commission;

(8) A statement that after the conclusion of such hearing the matter will be submitted to the board for its action.

(D) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land, as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing, and shall include all of the following:

(1) The name of the zoning commission that will be conducting the public hearing on the proposed amendment;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the public hearing;

(4) The name of the person responsible for giving notice of the public hearing by publication;

(5) A statement that after the conclusion of such hearing the matter will be submitted to the board of township trustees for its action;

(6) Any other information requested by the zoning commission.

(E) Within five days after the adoption of such motion or the certification of such resolution or the filing of such application the township zoning commission shall transmit a copy thereof together with text and map pertaining thereto to the county or regional planning commission, if there is such a commission.

The county or regional planning commission shall recommend the approval or denial of the proposed amendment or the approval of some modification thereof and shall submit such recommendation to the township zoning commission. Such recommendation shall be considered at the public hearing held by the township zoning commission on such proposed amendment.

The township zoning commission shall, within thirty days after such hearing, recommend the approval or denial of the proposed amendment, or the approval of some modification thereof and submit such recommendation together with such application or resolution, the text and map pertaining thereto and the recommendation of the county or regional planning commission thereon to the board of township trustees.

The board of township trustees shall, upon receipt of such recommendation, set a time for a public hearing on such proposed amendment, which date shall not be more than thirty days from the date of the receipt of such recommendation from the township zoning commission. Notice of such public hearing shall be given by the board by one publication in one or more newspapers of general circulation in the township, at least ten days before the date of such hearing.

(F) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing and shall include all of the following:

(1) The name of the board that will be conducting the public hearing;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of these properties, as they appear on the county auditor's current tax list;

(4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of such property;

(5) The time and place where the motion, application, or resolution proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the public hearing;

(6) The name of the person responsible for giving notice of the public hearing by publication or by mail, or by both publication and mail;

(7) Any other information requested by the board.

(G) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing, and shall include all of the following:

(1) The name of the board that will be conducting the public hearing on the proposed amendment;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the public hearing;

(4) The name of the person responsible for giving notice of the public hearing by publication;

(5) Any other information requested by the board.

(H) Within twenty days after such public hearing the board shall either adopt or deny the recommendations of the zoning commission or adopt some modification thereof. In the event the board denies or modifies the recommendation of the township zoning commission the unanimous vote of the board shall be required.

Such amendment adopted by the board shall become effective in thirty days after the date of such adoption unless within thirty days after the adoption of the amendment there is presented to the board of township trustees a petition, signed by a number of registered electors residing in the unincorporated area of the township or part thereof included in the zoning plan equal to not less than eight percent of the total vote cast for all candidates for governor in such area at the last preceding general election at which a governor was elected, requesting the board of township trustees to submit the amendment to the electors of such area for approval or rejection at a special election to be held on the day of the next primary or general election. Each part of this petition shall contain the number and the full and correct title, if any, of the zoning amendment resolution, motion, or application, furnishing the name by which the amendment is known and a brief summary of its contents. In addition to meeting the requirements of this section, each petition shall be governed by the rules specified in section 3501.38 of the Revised Code.

The form of a petition calling for a zoning referendum and a statement of the circulator shall be substantially as follows:

"PETITION FOR ZONING REFERENDUM"

(if the proposal is identified by a particular name or number, or both, these should be inserted here) _____.

A proposal to amend the zoning map of the unincorporated area of _____ Township, _____ County, Ohio, adopted _____ (date) _____ (followed by brief summary of the proposal).

To the Board of Township Trustees of _____ Township, _____ County, Ohio:

We, the undersigned, being electors residing in the unincorporated area of _____ Township, included within the _____ Township Zoning Plan, equal to not less than eight percent of the total vote cast for all candidates for governor in the area at the preceding general election at which a governor was elected, request the Board of Township Trustees to submit this amendment of the zoning resolution to the electors of _____ Township residing within the unincorporated area of the township included in the _____ Township Zoning Resolution, for approval or rejection at a special election to be held on the day of the next primary of general election to be held on _____ (date) _____, pursuant to section 519.12 of the Revised Code.

Signature, Street Address, Township, Precinct, County, Date of Signing
or R.F.D.

_____

_____

STATEMENT OF CIRCULATOR

_____ (name of circulator) _____ declares under penalty of election falsification that he is an elector of the state of Ohio and resides at the address appearing below his signature hereto; that he is the circulator of the foregoing part petition containing _____ (number) _____ signatures; that he witnessed the affixing of every signature; that all signers were to the best of his knowledge and belief qualified to sign; and that every signature is to the best of his knowledge and belief the signature of the person whose signature it purports to be.

_____
(Signature of circulator)

_____
(Address)

_____
(City, village, or township, and zip code)

The penalty for election falsification is imprisonment for not more than six months, or a fine of not more than one thousand dollars, or both.

The petition shall be filed, accompanied by an appropriate map of the area affected by the zoning proposal, with the board of township trustees, which shall then transmit the petition within two weeks of its receipt to the board of elections, which shall determine the sufficiency and validity of the petition. The petition shall be certified to the board of elections not less than seventy-five days prior to the election at which the question is to be voted upon.

No amendment for which such referendum vote has been requested shall be put into effect unless a majority of the vote cast on the issue is in favor of the amendment. Upon certification by the board of elections that the amendment has been approved by the voters it shall take immediate effect.

(S. 519.12.1) S. 519.121 Ratification of amendments to township zoning plan

All amendments or supplements to a township zoning plan adopted by a board of township trustees prior to the effective date of this act, except those amendments or supplements which a court of competent jurisdiction has declared unlawful or unreasonable or which are the subject of an action now pending in such a court, are hereby ratified and shall be valid amendments or supplements to such zoning plan regardless of the procedure followed with respect to such amendments or supplements prior to their adoption by a board of township trustees, except that no right of appeal on the issue of the unlawful or unreasonable character of an amendment or supplement shall be lost by the provisions of this section.

S. 519.13 Township board of zoning appeals; compensation and expenses

In any township which adopts zoning regulations the board of township trustees shall appoint a township board of zoning appeals of five members who shall be residents of the unincorporated territory in the township included in the area zoned. The terms of all members shall be of such length and so arranged that the term of one member will expire each year. Each member shall serve until his successor is appointed and qualified. Members shall be removable for the same causes and in the same manner as provided by section 519.04 of the Revised Code. Vacancies shall be filled by the board of township trustees and shall be for the unexpired term. The members may be allowed their expenses, or such compensation, or both, as the board of township trustees may approve and provide.

The board of zoning appeals may within the limits of the moneys appropriated by the board of township trustees for the purpose, employ such executives, professional, technical, and other assistants as it deems necessary.

S. 519.14 Powers of township board of zoning appeals

The township board of zoning appeals may:

(A) Hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of sections 519.02 to 519.25 of the Revised Code, or of any resolution adopted pursuant thereto;

(B) Authorize, upon appeal, in specific cases, such variance from the terms of the zoning resolution as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the resolution will result in unnecessary hardship, and so that the spirit of the resolution shall be observed and substantial justice done;

(C) Grant conditional zoning certificates for the use of land, buildings, or other structures if such certificates for specific uses are provided for in the zoning resolution;

(D) Revoke an authorized variance or conditional zoning certificate granted for the extraction of minerals, if any condition of the variance or certificate is violated.

The board shall notify the holder of the variance or certificate by certified mail of its intent to revoke the variance or certificate under division (D) of this section and of his right to a hearing before the board, within thirty days of the mailing of the notice, if he so requests. If the holder requests a hearing, the board shall set a time and place for the hearing, and notify the holder. At the hearing, the holder may appear in person, by his attorney or other representative, or he may present his position in writing. He may present evidence and examine witnesses appearing for or against him. If no hearing is requested, the board may revoke the variance or certificate without a hearing. The authority to revoke a variance or certificate is in addition to any other means of zoning enforcement provided by law.

In exercising the above-mentioned powers, such board may, in conformity with such sections, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and may make such order, requirement, decision, or determination as ought to be made, and to that end has all powers of the officer from whom the appeal is taken.

S. 519.15 Rules, organization and meetings of zoning appeals board

The township board of zoning appeals shall organize and adopt rules in accordance with the zoning resolution. Meetings of the board of zoning appeals shall be held at the call of the chairman, and at such other times as the board determines. The chairman, or in his absence the acting chairman, may administer oaths, and the board of zoning appeals may compel the attendance of witnesses. All meetings of the board of zoning appeals shall be open to the public. The board of zoning appeals shall keep minutes of its proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board of township trustees and be a public record.

Appeals to the board of zoning appeals may be taken by any person aggrieved or by any officer of the township affected by any decision of the administrative officer. Such appeal shall be taken within twenty days after the decision by filing, with the officer from whom the appeal is taken and with the board of zoning appeals, a notice of appeal specifying the grounds. The officer from whom the appeal is taken shall forthwith transmit to the board of zoning appeals all the papers constituting the record upon which the action appealed from was taken.

The board of zoning appeals shall fix a reasonable time for the public hearing of the appeal, give at least ten days' notice in writing to the parties in interest, give notice of such public hearing by one publication in one or more newspapers of general circulation in the county at least ten days before the date of such hearing and decide the appeal within a reasonable time after it is submitted. Upon the hearing, any person may appear in person or by attorney.

S. 519.16 Enforcement of zoning regulations; township zoning inspector

For the purpose of enforcing the zoning regulations, the board of township trustees may provide a system of zoning certificates, and for this purpose may establish and fill the position of township zoning inspector, together with such assistants as the board deems necessary, fix the compensation for such positions, and make disbursements for them. The township clerk may be appointed secretary of the township zoning commission, secretary of the township board of zoning appeals, and zoning inspector, and he may receive compensation for such services in addition to other compensation allowed by law.

(S. 519.16.1) S. 519.161 Inspector's bond

The township zoning inspector, before entering upon the duties of his office, shall give bond, signed by a bonding or surety company authorized to do business in this state, or, at his option, signed by two or more freeholders having real estate in the value of double the amount of the bond, over and above all incumbrances to the state, in the sum of not less than one thousand or more than five thousand dollars as fixed by the board of township trustees. Such surety company or real estate bond shall be approved by the board of township trustees and the bond shall be approved by the board of township trustees and the bond shall be conditioned upon the faithful performance of such zoning inspector's official duties. Such bond shall be deposited with the township clerk.

S. 519.17 Zoning certificate required

No person shall locate, erect, construct, reconstruct, enlarge, or structurally alter any building or structure within the territory included in a zoning resolution without obtaining a zoning certificate, if required under section 519.16 of the Revised Code, and no such zoning certificate shall be issued unless the plans for the proposed building or structure fully comply with the zoning regulations then in effect.

S. 519.18 Township regulations inapplicable to municipal territory except for period after incorporation or annexation

Regulations enacted by a board of township trustees under sections 519.02 to 519.25, inclusive, of the Revised Code, shall not apply within municipal corporations, except that where township territory, subject to such regulations, is incorporated, such regulations shall apply therein and be enforced by the township officials until the election and qualification of the officers for the newly incorporated territory, and for not to exceed ninety days thereafter, to enable the officers of the newly incorporated territory to adopt zoning regulations. Upon annexation of township territory to an existing municipal corporation the zoning regulations then in effect shall remain in full force and shall be enforced by the township officials until the legislative authority of said municipal corporation shall either officially adopt the existing zoning regulations or new regulations for such territory.

S. 519.19 Nonconforming use of buildings and land not affected by zoning (GC S. 3180-43)

The lawful use of any dwelling, building, or structure and of any land or premises, as existing and lawful at the time of enactment of a zoning resolution or amendment thereto, may be continued, although such use does not conform with such resolution or amendment, but if any such nonconforming use is voluntarily discontinued for two years or more, any future use of said land shall be in conformity with sections 519.02 to 519.25, inclusive, of the Revised Code. The board of township trustees shall provide in any zoning resolution for the completion, restoration, reconstruction, extension, or substitution of nonconforming uses upon such reasonable terms as are set forth in the zoning regulation.

S. 519.20 Outdoor advertising classified as business use

For the purposes of sections 519.02 to 519.25, inclusive, of the Revised Code, outdoor advertising shall be classified as a business use and be permitted in all districts zoned for industry, business, or trade, or lands used for agricultural purposes.

S. 519.21 Powers not conferred by chapter

(A) Except as otherwise provided in division (B) of this section, sections 519.02 to 519.25 of the Revised Code confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the use of any land for agricultural purposes or the construction or use of buildings or structures incident to the use for agricultural purposes of the land on which such buildings or structures are located, including buildings or structures that are used primarily for vinting and selling wine and that are located on land any part of which is used for viticulture, and no zoning certificate shall be required for any such building or structure.

(B) A township zoning resolution, or an amendment to such resolution, may in any platted subdivision approved under section 711.05, 711.09, or 711.10 of the Revised Code, or in any area consisting of fifteen or more lots approved under section 711.131 [711.13.1] of the Revised Code that are contiguous to one another, or some of which are contiguous to one another and adjacent to one side of a dedicated public road, and the balance of which are contiguous to one another and adjacent to the opposite side of the same dedicated public road regulate:

(1) Agriculture on lots of one acre or less;

(2) Buildings or structures incident to the use of land for agricultural purposes on lots greater than one acre but not greater than five acres by: set back building lines; height; and size;

(3) Dairying and animal and poultry husbandry on lots greater than one acre but not greater than five acres when at least thirty-five per cent of the lots in the subdivision are developed with at least one building, structure, or improvement that is subject to real property taxation or that is subject to the tax on manufactured homes under section 4503.06 of the Revised Code. After thirty-five per cent of the lots are so developed, dairying and animal and poultry husbandry shall be considered nonconforming use of land and buildings or structures pursuant to section 519.19 of the Revised Code.

Division (B) of this section confers no power on any township zoning commission, board of township trustees, or board of zoning appeals to regulate agriculture, buildings or structures, and dairying and animal and poultry husbandry on lots greater than five acres.

(C) Such sections confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit in a district zoned for agricultural, industrial, residential, or commercial uses, the use of any land for a farm market where fifty per cent or more of the gross income received from the market is derived from produce raised on farms owned or operated by the market operator in a normal crop year. However, a board of township trustees, as provided in section 519.02 of the Revised Code, may regulate such factors pertaining to farm markets as size of the structure, size of parking areas that may be required, set back building lines, and egress or ingress, where such regulation is necessary to protect the public health and safety.

(S. 519.21.1) S. 519.211 Limitations on zoning powers

Sections 519.02 to 519.25 of the Revised Code confer no power on any board of township trustees or board of zoning appeals in respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any public utility or railroad, whether publicly or privately owned, or the use of land by any public utility or railroad, for the operation of its business.

Such sections confer no power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the sale or use of alcoholic beverages in areas where the establishment and operation of any retail business, hotel, lunchroom, or restaurant is permitted.

Such sections do not confer any power on any township zoning commission, board of township trustees, or board of zoning appeals to prohibit the use of any land owned or leased by an industrial firm for the conduct of oil or natural gas well drilling or production activities or the location of associated facilities or equipment when such oil or natural gas obtained by the industrial firm is used for the operation of its own plants.

S. 519.22 County rural zoning regulations to take precedence

Where the people of any township or part thereof have approved county rural zoning regulations in accordance with sections 303.02 to 303.25, inclusive, of the Revised Code, prior to the adoption of a zoning resolution by the board of township trustees, and the township plan includes any area covered by the county rural zoning plan, the zoning resolution adopted by the board of county commissioners shall take precedence over the zoning resolution adopted by the board of township trustees, unless a majority of the voters in such zoned area of the township voting on the issue have voted to have the county rural zoning plan replaced with the township plan of zoning.

S. 519.23 Prohibition against violating resolution

No building shall be located, erected, constructed, reconstructed, enlarged, changed, maintained, or used, and no land shall be used in violation of any resolution, or amendment or supplement to such resolution, adopted by any board of township trustees under sections 519.02 to 519.25, inclusive, of the Revised Code. Each day's continuation of a violation of this section may be deemed a separate offense.

S. 519.24 Action to prevent violations of zoning regulations; special council

In case any building is or is proposed to be located, erected, constructed, enlarged, changed, maintained, or used or any land is or is proposed to be used in violation of sections 519.01 to 519.99, inclusive, of the Revised Code, or of any regulation or provision adopted by any board of township trustees under such sections, such board, the prosecuting attorney of the county, the township zoning inspector, or any adjacent or neighboring property owner who would be especially damaged by such violation, in addition to other remedies provided by law, may institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful location, erection, construction, reconstruction, enlargement, change, maintenance, or use. The board of township trustees may employ special counsel to represent it in any proceeding or to prosecute any actions brought under this section.

S. 519.25 Township zoning plan repeal; procedure; referendum

In any township in which there is in force a plan of township zoning, the plan may be repealed by the board of township trustees in the following manner:

(A) The board may adopt a resolution upon its own initiative.

(B) The board shall adopt a resolution if there is presented to it a petition, similar in all relevant aspects to that prescribed in section 519.12 of the Revised Code, signed by a number of qualified electors, residing in the unincorporated area of such township included in the zoning plan equal to not less than eight percent of the total vote cast for all candidates for governor in such area at the last preceding general election at which a governor was elected, requesting that the question of whether or not the plan of zoning in effect in such township shall be repealed, be submitted to the electors residing in the unincorporated area of the township included in the zoning plan at a special election to be held on the day of the next primary or general election. The resolution adopted by the board of township trustees to cause such question to be submitted to the electors shall be certified to the board of elections not later than seventy-five days prior to the day of election at which said question is to be voted upon. In the event a majority of the vote cast on such question in the township is in favor of repeal of zoning, then such regulations shall no longer be of any effect. Not more than one such election shall be held in any two calendar years.

S. 519.99 Penalty

(A) Whoever violates sections 519.01 to 519.25, inclusive, of the Revised Code shall be fined not more than one hundred dollars for each offense.

APPENDIX C

OHIO REVISED CODE

CHAPTER 713: PLANNING COMMISSIONS; MUNICIPAL ZONING

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CITY PLANNING COMMISSION

S. 713.01 Establishment of planning commission.

The legislative authority of each city having a board of park commissioners may establish a city planning commission of seven members, consisting of the mayor, the director of public service, the president of the board of park commissioners, and four citizens of the municipal corporation who shall serve without compensation and shall be appointed by the mayor for terms of six years each, except that the term of two of the members of the first commission shall be for three years. The legislative authority may, by resolution, change the number of citizen members to an even number of members, not less than four nor more than twelve. Whenever the size of a commission is expanded, the initial appointees to new positions shall be appointed to terms which permit half the citizen members to be reappointed each third year. No reduction in the size of a commission shall affect the term of any incumbent, and at least two citizen members shall be appointed every third year.

The legislative authority of each city without a board of park commissioners may establish a commission of five members, consisting of the mayor, the director of public service, and three citizens of the municipal corporation who shall serve without compensation and shall be appointed by the mayor for a term of six years, except that the term of one of the members of the first commission shall be for four years and one for two years.

The legislative authority of each city with a commission plan of government, adopted as provided in sections 705.01 to 705.06, inclusive, 705.31, 705.32, and 705.41 to 705.48, inclusive, of the Revised Code, may establish a city planning commission of five members, consisting of the chairman of the legislative authority and four citizens of the city to be appointed by the legislative authority for terms of six years each, except that the term of two of the members of the first planning commission shall be for four years and two for two years. All members of the planning commission shall serve without compensation.

The legislative authority of each city with a city manager plan of government, adopted as provided in sections 705.01 to 705.06, inclusive, and 705.51 to 705.60, inclusive, of the Revised Code, may establish a commission of five members, consisting of the chairman of the legislative authority, the city manager, and three citizens of the city who shall serve without compensation and shall be appointed by the city manager for terms of six years each, except that the term of one of the members of the first commission shall be for four years and one for two years.

The legislative authority of each village may establish a commission of five members, consisting of the mayor, one member of the legislative authority to be elected thereby for the remainder of his term as such member of the legislative authority, and three citizens of the village to be appointed by the mayor for terms of six years each, except that the term of one of the members of the first commission shall be for four years and one for two years. All such members shall serve without compensation.

Whenever such a commission is appointed, it shall have all the powers conferred in section 735.15 of the Revised Code.

Except as otherwise provided in its charter, the commission of a charter municipal corporation created in the manner and by virtue of authority granted by its charter, shall have the powers of and the plans made by it shall have the effect of a planning commission or city plan created under sections 713.01 to 713.15, inclusive, of the Revised Code.

Any member of a city or village planning commission established under this section or by charter, except as otherwise provided in its charter, may hold any other public office and may serve as a member of a county, and a regional planning commission.

S. 713.02 Powers and duties of city planning commission; funds from federal agencies; legislative authority may overrule commission

The planning commission established under section 713.01 of the Revised Code shall make plans and maps of the whole or any portion of the municipal corporation, and of any land outside thereof, which, in the opinion of the commission, is related to the planning of the municipal corporation, and make changes in such plans or maps when it deems it advisable. Such maps or plans shall show the commission's recommendations for the general location, character, and extent of streets, alleys, ways, viaducts, bridges, waterways, waterfronts, subways, boulevards, parkways, parks, playgrounds, aviation fields and other public grounds, ways, and open spaces; the general location of public buildings and other public property; the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power, and other purposes; and the removal, relocation, widening, narrowing, vacating, abandonment, change of use of or extension of such public ways, grounds, open spaces, buildings, property, utilities, or terminals. With a view to the systematic planning of the municipal corporation, the commission may make recommendations to public officials concerning the general location, character, and extent of any such public ways, grounds, open spaces, buildings, property, utilities, or terminals. As the work of making the whole plan progresses, the commission may from time to time adopt and publish any part thereof, and such part shall cover one or more major sections or divisions of the municipal corporation or one or more of the functional matters to be included in the plan. The commission may from time to time amend, extend, or add to the plan. This section does not confer any powers on the commission with respect to the construction, maintenance, use, or enlargement of improvements by any public utility or railroad on its own property if such utility is owned or operated by an individual, partnership, association, or a corporation for profit.

The planning commission may accept, receive, and expend funds, grants, and services from the federal government or its agencies, from departments, agencies, and instrumentalities of this state or any adjoining state or from one or more counties of this state or any adjoining state or from any municipal corporation or political subdivision of this or any adjoining state, including county, regional, and municipal planning commissions of this or any adjoining state, or from civic sources, and contract with respect thereto, either separately or jointly or cooperatively, and provide such information and reports as may be necessary to secure such financial aid.

The commission may control, preserve, and care for historical landmarks; control, in the manner provided by ordinance, the design and location of statuary and other works of art, which are the property of the municipal corporation; control the removal, relocation, and alteration of any such works; and control the design of harbors, bridges, viaducts, street fixtures, and other public structures and appurtenances.

Whenever the commission makes a plan of the municipal corporation, or any portion thereof, no public building or structure, street, boulevard, parkway, park, playground, public ground, canal, river front, harbor, dock, wharf, bridge, viaduct, tunnel, or other public way, ground, works, or utility, whether publicly or privately owned, or a part thereof, shall be constructed or authorized to be constructed in the municipal corporation or planned portion thereof unless the location, character, and extent thereof is approved by the commission. In case of disapproval the commission shall communicate its reasons therefor to the legislative authority of the municipal corporation and to the head of the department which has control of the construction of the proposed improvement or utility. The legislative authority, by a vote of not less than two-thirds of its members and of such department head, together may overrule such disapproval. If such public way, ground, works, building, structure, or utility is one the authorization or financing of which does not, under the law or charter provisions governing it, fall within the province of a municipal legislative authority or other municipal body or official, the submission to the commission shall be by the state, school, county, district, or township official, board, commission, or body having such jurisdiction, and the commission's disapproval may be overruled by such official, board, commission, or body by a vote of not less than two-thirds of its membership. The narrowing, ornamentation, vacation, or change in the use of streets and other public ways, grounds, and places shall be subject to similar approval, and disapproval may be similarly overruled. The commission may make recommendations to any public authorities or to any corporations or individuals in such municipal corporation or the territory contiguous thereto, concerning the location of any buildings, structures, or works to be erected or constructed by them.

S. 713.03 Planning commission shall be platting commission

The planning commission of a municipal corporation shall be the platting commission thereof, and all the powers and duties provided by sections 735.17 to 735.26, inclusive, of the Revised Code, shall, upon the appointment of a municipal planning commission under section 713.01 of the Revised Code, be transferred to it.

S. 713.04 Control as to buildings

The legislative authority of a municipal corporation may authorize the planning commission to control the height, design, and location of buildings.

S. 713.05 Employment of architects and engineers

The planning commission may control, appoint, or employ such architects, engineers, and other professional service, and may appoint such clerks, draughts-

men, and other subordinates as are necessary for the performance of its functions. The expenditures for such service and employments shall be within the amounts appropriated for such persons by the legislative authority of the municipal corporation, and such legislative authority shall provide for the expenses and accommodations necessary for the work of the commission.

S. 713.06 Division of municipal corporation into zones

The planning commission of any municipal corporation may frame and adopt a plan for dividing the municipal corporation or any portion thereof into zones or districts, representing the recommendations of the commission, in the interest of the public health, safety, convenience, comfort, prosperity, or general welfare, for the limitations and regulation of the height, bulk, and location, including percentage of lot occupancy, set back building lines, and area and dimensions of yards, courts, and other open spaces, and the uses of buildings and other structures and of premises in such zones or districts.

S. 713.07 Restriction in location of buildings and structures

Whenever the planning commission of any municipal corporation or any board or officer with city planning powers, whether such commission, board, or officer is created by statute or municipal charter, certifies to the legislative authority of the municipal corporation any plan for the districting or zoning thereof according to the uses of buildings and other structures and of premises, such legislative authority, in the interest of the promotion of the public health, safety, convenience, comfort, prosperity, or general welfare, may regulate and restrict the location of buildings and other structures and of premises to be used for trade, industry, residence, or other specified uses, and for such purposes may divide the municipal corporation into districts of such number, shape, and area as are best suited to carry out the purposes of this section. Regulations may be imposed for each of such districts, designating the kinds or classes of trades, industries, residences, or other purposes for which buildings or other structures or premises may be permitted to be erected, altered, or used subject to special regulations.

S. 713.08 Restrictions on height of buildings and structures

Whenever a planning commission, board, or officer certifies to the legislative authority of a municipal corporation any plan for the districting or zoning of the municipal corporation according to the height of buildings and other structures, such legislative authority may, in the interest of the promotion of the public health, safety, convenience, comfort, prosperity, or general welfare, regulate and limit the height of buildings and other structures thereafter erected or altered and for such purpose may divide the municipal corporation into districts of such number, shape, and area as are best suited to carry out the purposes of this section. Any such regulation imposing a lower height limitation than that provided by statute shall, within the district for which it is imposed, prevail over such statute.

S. 713.09 Restrictions on bulk and location of buildings and structures, percentage of lot occupancy, and set back building lines

Whenever any planning commission, board, or officer certifies to the legislative authority any plan for the districting or zoning of the municipal corporation according to the bulk and location of buildings and other structures including percentage of lot occupancy, set back building lines, and area of yards, courts, and other open spaces such legislative authority may, in the interest of the promotion of the public health, safety, convenience, comfort, prosperity, or general welfare, regulate the bulk and location of buildings and other structures thereafter erected or altered, including the percentage of lot occupancy, set back building lines, and the area of yards, courts and other open spaces. For such purposes the legislative authority may divide the municipal corporation into districts of such number, shape, and area as is best suited to carry out the purposes of this section. Any such regulation imposing a smaller percentage of lot occupancy, wider or larger courts, deeper yards, or other more strict limitations than those provided by statute shall, within the district for which it is imposed, prevail over such statute.

S. 713.10 Basis of districting or zoning; classification of buildings and structures

The districting or zoning of any municipal corporation or part thereof may be based upon any combination of two or more of the purposes described in sections 713.07 to 713.09, inclusive, of the Revised Code. In the determination and establishment of such districts buildings and other structures may be classified on the basis of the nature or character of trade, industry, profession, or other activity conducted or to be conducted therein, the number of persons, families, or other group units to reside in or use them, the public, quasi-public, or private nature of the use thereof, or upon any other basis relevant to the promotion of the public safety, health, morals, convenience, prosperity, or welfare.

The legislative authority of such municipal corporation may amend or change the number, shape, area, or regulations of or within any district, but no such amendment or change shall become effective unless the ordinance proposing it is first submitted to the planning commission, board, or officer for approval, disapproval, or suggestions and the commission, board, or officer is allowed a reasonable time, not less than thirty days, for consideration and report.

ADMINISTRATIVE BOARD OF ZONING APPEALS

S. 713.11 Administrative board; powers and duties

The legislative authority of a municipal corporation may create an administrative board to administer the details of the application of the regulations under sections 713.07 to 713.12, inclusive, of the Revised Code, and may delegate to such board, in accordance with general rules and regulations to be set forth in the districting ordinances and regulations, the power to hear and determine appeals from refusal of building permits by building commissioners or other officers, to permit exceptions to and variations from the district regulations in the classes of cases or situations specified in the regulations, and to administer

the regulations as specified therein. Such administrative powers and functions may be delegated by the legislative authority to the planning commission or board.

GENERAL PROVISIONS - MUNICIPAL ZONING

S. 713.12 Notice and hearing on municipal zoning measures; approval of legislative authority

Before any ordinance, measure, regulation, or amendments thereto, authorized by sections 713.07 to 713.11, inclusive, of the Revised Code, may be passed the legislative authority of the municipal corporation shall hold a public hearing thereon, and shall give at least thirty days' notice of the time and place thereof in a newspaper of general circulation in the municipal corporation. If the ordinance, measure, or regulation intends to re-zone or re-district ten or less parcels of land, as listed on the tax duplicate, written notice of the hearing shall be mailed by the clerk of the legislative authority, by first class mail, at least twenty days before the date of the public hearing to the owners of property within and contiguous to and directly across the street from such parcel or parcels, to the addresses of such owners appearing on the county auditor's current tax list or the treasurer's mailing list and to such other list or lists that may be specified by the legislative authority. The failure of delivery of such notice shall not invalidate any such ordinance, measure, or regulations. During such thirty days the text or copy of the text of such ordinance, measure, or regulation, together with the maps or plans, or copies thereof, forming part of or referred to in such ordinance, measure, or regulation and the maps, plans, and reports submitted by the planning commission, board, or officer shall be on file, for public examination, in the office of the clerk of the legislative authority or in such other office as is designated by the legislative authority.

No such ordinance, measure, or regulation which violates, differs from, or departs from the plan or report submitted by the commission, board, or officer shall take effect unless passed or approved by not less than three fourths of the membership of the legislative authority. No ordinance, measure, or regulation which is in accordance with the recommendations, plans, or report submitted by the commission, board, or officer shall be deemed to pass or take effect without the concurrence of at least a majority of the members elected to the legislative authority.

S. 713.13 Violation of zoning ordinance may be enjoined

No person shall erect, construct, alter, repair, or maintain any building or structure or use any land in violation of any zoning ordinance or regulation enacted pursuant to sections 713.06 to 713.12, inclusive, of the Revised Code, or Section 3 of Article XVIII, Ohio Constitution. In the event of any such violation, or imminent threat thereof, the municipal corporation, or the owner of any contiguous or neighboring property who would be especially damaged by such violation, in addition to any other remedies provided by law, may institute a suit for injunction to prevent or terminate such violation.

S. 713.14 Effect of zoning on laws and charters; continuance in newly created municipality

Sections 713.06 to 713.12, inclusive, of the Revised Code do not repeal, reduce, or modify any power granted by law or charter to any municipal corporation or the legislative authority thereof, or impair or restrict the power of any municipal corporation under Article XVIII of the Ohio Constitution. And where a new municipal corporation is created out of the territory of a county or township or any part thereof in which territory zoning regulations have been previously adopted as provided by sections 303.02 to 303.25, inclusive, or sections 519.02 to 519.25, inclusive, of the Revised Code, such regulations may be adopted and continued in full force and effect by the newly created municipal corporation without following the procedure prescribed by sections 713.07 to 713.11, inclusive, of the Revised Code and the council of such newly incorporated municipal corporation may continue such zoning provisions in effect by the enactment of an emergency ordinance as provided by law.

Sections 713.06 to 713.12, inclusive, of the Revised Code do not authorize a municipal corporation to reserve the use of any private property for future public use for the purpose of extending or widening streets.

S. 713.15 Retroactive zoning ordinance prohibited

The lawful use of any dwelling, building, or structure and of any land or premises, as existing and lawful at the time of enacting a zoning ordinance or amendment thereto, may be continued, although such use does not conform with the provisions of such ordinance or amendment, but if any such nonconforming use is voluntarily discontinued for two years or more, any future use of such land shall be in conformity with sections 713.01 to 713.15, inclusive, of the Revised Code. The legislative authority of a municipal corporation shall provide in any zoning ordinance for the completion, restoration, reconstruction, extension, or substitution of nonconforming uses upon such reasonable terms as are set forth in the zoning ordinance.

REGIONAL AND COUNTY PLANNING COMMISSIONS

S. 713.21 Regional planning commission

The planning commission of any municipal corporation or group of municipal corporations, any board of township trustees, and the board of county commissioners of any county in which such municipal corporation or group of municipal corporations is located or of any adjoining county may co-operate in the creation of a regional planning commission, for any region defined as agreed upon by the planning commissions and boards, exclusive of any territory within the limits of a municipal corporation not having a planning commission. After creation of a regional planning commission, school districts, special districts, authorities, and any other units of local government may participate in the regional planning commission, upon such terms as may be agreed upon by the planning commissions and boards.

The number of members of such regional planning commission, their method of appointment, and the proportion of the costs of such regional planning to be borne respectively by the various municipal corporations, townships, and counties in the region and by other participating units of local government shall be such as is determined by a majority of the planning commissions and boards. Any member of a regional planning commission may hold any other public office and may serve as a member of a city, village, and a county planning commission, except as otherwise provided in the charter of any city or village. Such boards and legislative authorities of such municipal corporations, and the governing bodies of other participating units of local government, may appropriate their respective shares of such costs. The sums so appropriated shall be paid into the treasury of the county in which the greater portion of the population of the region is located, and shall be paid out on the certificate of the regional planning commission and the warrant of the county auditor of such county for the purposes authorized by sections 713.21 to 713.27, inclusive, of the Revised Code. The regional planning commission may accept, receive, and expend funds, grants, and services from the federal government or its agencies, from departments, agencies, and instrumentalities of this state or any adjoining state or from one or more counties of this state or any adjoining state or from any municipal corporation or political subdivision of this or any adjoining state, including county, regional, and municipal planning commission of this or any adjoining state, or from civic sources, and contract with respect thereto, either separately, jointly, or cooperatively, and provide such information and reports as may be necessary to secure such financial aid. Within the amounts thus agreed upon and appropriated or otherwise received, the regional planning commission may employ engineers, accountants, consultants, and employees as are necessary and may rent or lease such space, purchase, lease, and lease with option to purchase such equipment, and make such purchases as it deems necessary to its use. The regional planning commission may purchase, lease with option to purchase, or receive as a gift property and buildings within which it is housed and carries out its responsibilities, provided that the rules of the commission provide for the disposition of the property and buildings in the event that the commission is dissolved or otherwise terminated.

The regional planning commission may establish such committees with such powers as it finds necessary to carry on its work, including an executive committee to make such final determinations, decisions, findings, recommendations, and orders as the rules of the regional planning commissions provide. All actions of such committees shall be reported in writing to the members of the commission no later than the next meeting of the regional planning commission or within thirty days from the date of the action, whichever is earlier. The commission may provide a procedure to ratify committee actions by a vote of the members. The commission may make agreements with other agencies, public or private, for the temporary transfer or joint use of staff employees, and may contract for professional or consultant services for or from other governmental and private agencies and persons.

S. 713.22 County planning commission

The board of county commissioners of any county may, and on petition of the planning commissions of a majority of the municipal corporations in the county having such planning commission shall, provide for the organization and maintenance of a county planning commission. Such county planning commission

shall consist of eight citizens of the county appointed by the board, together with the members of the board. If the population of any city in the county exceeds fifty per cent of the total population of the county, then at least three of the appointive members shall be selected from persons nominated by the planning commission of such city. The appointive members shall be appointed for terms of three years, except that of the eight members first appointed three shall be appointed for terms of two years and two shall be appointed for a term of one year. The members shall serve without pay. Any member of a county planning commission may hold any other public office and may serve as a member of a city, village, and regional planning commission, except as otherwise provided in the charter of any city or village.

The county planning commission may employ engineers, accountants, consultants, and employees as are necessary, and make such purchases as may be needed to the furtherance of its operation.

The county planning commission may accept, receive, and expend funds, grants, and services from the federal government or its agencies, from departments, agencies, and instrumentalities of this state or any adjoining state or from one or more counties of this state or any adjoining state or from any municipal corporation or political subdivision of this or any adjoining state, including county, regional, and municipal planning commission of this or any adjoining state, or from civic sources, and contract with respect thereto, either separately or jointly or cooperatively, and provide such information and reports as may be necessary to secure such financial aid.

The compensation of such employees and the expenses of the appointive members of the county planning commission shall be paid from appropriations made by the board.

S. 713.23 Powers and duties of regional or county planning commission

Note: See also following version of this section, eff. 7-1-90.

(A) The regional or county planning commission may make studies, maps, plans, recommendations and reports concerning the physical, environmental, social, economic, and governmental characteristics, functions, services, and other aspects of the region or county respectively. The commission may make such studies, maps, plans, recommendations, and other reports as to areas outside the region or county concerning the physical, environmental, social, economic, and governmental characteristics, functions, services, and other aspects which affect the development and welfare of the region or county respectively, as a whole or as more than one political unit within the region or county.

(B) The duties of the planning commission include but are not limited to:

(1) Preparing the plans, including studies, maps, recommendations, and reports on:

(a) Regional goals, objectives, opportunities, and needs, and standards, priorities, and policies to realize such goals and objectives;

(b) Economic and social conditions;

(c) The general pattern and intensity of land use and open space;

(d) The general land, water, and air transportation systems, and utility and communication systems;

(e) General locations and extent of public and private works, facilities, and services;

(f) General locations and extent of areas for conservation and development of natural resources and the control of the environment;

(g) Long-range programming and financing of capital projects and facilities.

(2) Promoting understanding of and recommending administrative and regulatory measures to implement the plans of the region;

(3) Collecting, processing, and analyzing social and economic data, undertaking continuing studies of natural and human resources, coordinating such research with other government agencies, educational institutions, and private organizations;

(4) Contracting with and providing planning assistance to other units of local government, councils of governments, planning commissions, and joint planning councils; coordinating the planning with neighboring planning areas; cooperating with the state and federal government in coordinating planning activities and programs in the region;

(5) Reviewing, evaluating, and making comments and recommendations on proposed and amended comprehensive land use, open space, transportation, and public facilities plans, projects, and implementing measures of local units of government; making recommendations to achieve compatibility in the region;

(6) Reviewing, evaluating, and making comments and recommendations on the planning, programming, location, financing, and scheduling of public facility projects within the region and affecting the development of the area;

(7) Undertaking other studies, planning, programming, conducting experimental or demonstration projects found necessary in the development of plans for the region or county, and coordinating work and exercising all other powers necessary and proper for discharging its duties.

(C) Wherever a regional planning commission has been established within the area of the jurisdiction of a county planning commission, the regional planning commission or the county planning commission may, by mutual agreement, transfer or delegate to the other, all, or part, of the functions, powers, and duties which either may perform.

(D) A regional planning commission may perform, by contract, the purchasing of supplies, services, materials, and equipment on behalf of any political subdivision participating in the commission or on behalf of any other political subdivision. For purposes of this division, the purchase of services includes, among other things, the purchase of insurance coverage for a political subdivision and its officials and employees against the legal liability of the insured in a civil action for injury, death, or loss to persons or property caused by or claimed to be caused by the negligence of the political subdivision or its officials or employees. Any political subdivision desiring to participate in a purchase contract with a regional planning commission shall file with the commission a certified copy of an ordinance or resolution of the political subdivision. The ordinance or resolution shall request that the political subdivision be authorized to participate in such a contract and shall agree that the political subdivision will be bound by such terms and conditions as the commission prescribes and that it will directly pay the vendor under each purchase contract. The commission may charge a political subdivision a reasonable fee to cover the administrative costs the commission incurs as a result of the subdivision's participation in the purchase contract. Purchases made by a political subdivision participating with a regional planning commission under this division are exempt from any competitive bidding required by law for the purchase

of supplies, services, materials, and equipment. No political subdivision shall make any purchase under this division when bids have been received for such purchase by the political subdivision, unless such purchase can be made upon the same terms, conditions, and specifications at a lower price under this division.

A regional planning commission, when entering into a purchase contract on behalf of a political subdivision as provided in this division, shall follow the competitive bidding procedures specified in sections 307.86 to 307.92 of the Revised Code.

This section is an interim section effective until July 1, 1990.

S. 713.23 Powers and duties of regional or county planning commission

Note: See also preceding version of this section, in effect until 7-1-90.

(A) The regional or county planning commission may make studies, maps, plans, recommendations and reports concerning the physical, environmental, social, economic, and governmental characteristics, functions, services, and other aspects of the region or county respectively. The commission may make such studies, maps, plans, recommendations, and other reports as to areas outside the region or county concerning the physical, environmental, social, economic, and governmental characteristics, functions, services, and other aspects which affect the development and welfare of the region or county respectively, as a whole or as more than one political unit within the region or county.

(B) The duties of the planning commission include but are not limited to:

(1) Preparing the plans, including studies, maps, recommendations, and reports on:

(a) Regional goals, objectives, opportunities, and needs, and standards, priorities, and policies to realize such goals and objectives;

(b) Economic and social conditions;

(c) The general pattern and intensity of land use and open space;

(d) The general land, water, and air transportation systems, and utility and communication systems;

(e) General locations and extent of public and private works, facilities, and services;

(f) General locations and extent of areas for conservation and development of natural resources and the control of the environment.

(g) Long-range programming and financing of capital projects and facilities.

(2) Promoting understanding of and recommending administrative and regulatory measures to implement the plans of the region;

(3) Collecting, processing, and analyzing social and economic data, undertaking continuing studies of natural and human resources, coordinating such research with other government agencies, educational institutions, and private organizations;

(4) Contracting with and providing planning assistance to other units of local government, councils of governments, planning commissions, and joint planning councils; coordinating the planning with neighboring planning areas; cooperating with the state and federal governments in coordinating planning activities and programs in the region;

(5) Reviewing, evaluating and making comments and recommendations on proposed and amended comprehensive land use, open space, transportation, and public facilities plans, projects, and implementing measures of local units of government; making recommendations to achieve compatibility in the region;

(6) Reviewing, evaluating, and making comments and recommendations on the planning, programming, location, financing, and scheduling of public facility projects within the region and affecting the development of the area;

(7) Undertaking other studies, planning, programming, conducting experimental or demonstration projects found necessary in the development of plans for the region or county, and coordinating work and exercising all other powers necessary and proper for discharging its duties.

(C) Wherever a regional planning commission has been established within the area of the jurisdiction of a county planning commission, the regional planning commission or the county planning commission may, by mutual agreement, transfer or delegate to the other, all or part, of the functions, powers, and duties which either may perform.

S. 713.231 Joint planning council

Any regional or county planning commission may by agreement join with other regional or county planning commissions to create a joint planning council after approval by at least a majority of the legislative authorities of the municipal corporations participating in the commission and by the participating board or boards of county commissioners.

The agreement shall specify the various powers and duties of regional or county planning commissions, including the power to contract, receive, and expend fees, funds and grants, and utilize services from any source, to be exercised by a joint planning council in all or parts of its area as may be specified. The agreement shall specify the area in which the powers and duties of such joint planning council shall be exercised. Such area shall be larger than the area of jurisdiction of any participating regional or county planning commission but within or coextensive with the combined areas of jurisdiction of the member planning commissions.

The agreement may also specify how such joint planning council shall be organized, how it shall operate, and how the costs of operation of such joint planning council, over and above such costs as are covered by fees, funds, and grants, shall be apportioned between or among the regional and county planning commissions creating such joint planning council.

The regional and county planning commissions participating in the joint planning council may amend the terms of agreement, including terms to include additional regional or county planning commissions, upon consent of all participants. Any participating planning commission may terminate its membership after giving three months' notice to the planning council of its adoption of a resolution to do so or in the manner provided in the agreement, but shall not be relieved of its obligation, including its share of the cost for the calendar year in which the termination occurs or for such other period as the agreement provides.

Any plan or modification or part of a plan recommended by such joint planning council shall be the plan of any regional or county planning commission when certified by such regional or county planning commission in the manner provided in section 713.24 of the Revised Code.

Any member of a joint planning council may hold any other public office, and may serve as a member of a city, village, regional, and county planning commission except as otherwise provided in the charter of a city or village.

S. 713.24 Copies of plans to municipal corporations

The regional planning commission of any region, or the county planning commission of any county, shall, after making the regional or county plan as provided by section 713.23 of the Revised Code, certify a copy thereof to the planning commission of each municipal corporation of the region or county, the board of county commissioners and county or regional planning commission of each county or region or part thereof included in the plan. In the event of the subsequent creation of a planning commission for any municipal corporation within a county having a county planning commission, or for any municipal corporation subsequently incorporated within the area of a region having a regional planning commission, a copy of the county or regional plan shall be immediately certified to such planning commission.

S. 713.25 Effect of adoption of plans

The planning commission of any municipal corporation to which a regional or county plan is certified under section 713.24 of the Revised Code, may adopt such plan, and it shall thereupon have the same force within such municipal corporation as is provided by law or charter for plans prepared and adopted by the local planning commission. The board of county commissioners may adopt such plan so far as it relates to nonmunicipal territory. Thereafter no public building, roadway, bridge, viaduct, or other public improvement or utility, publicly or privately owned, whose construction or location would constitute a departure from the plan, shall be constructed or authorized by the board except by unanimous vote. Such plans shall not designate the specific lots or parcels of land upon which such system, facilities, buildings, and improvements are proposed to be placed, but only the general site or location thereof. The effect of the adoption of such plan by the board shall cease as regards the location of any sewage or garbage disposal plant, and no official action of the board shall be controlled thereby in such respect, unless the site shown on the plan as the location of such plant is purchased within six months after the adoption of the plan by the board, or unless proceedings for the appropriation of the necessary property are commenced within a period of six months and such property is then or thereafter appropriated in such proceedings.

S. 713.26 County engineer shall assist commission

The county engineer of any county for which a regional or county planning commission has been organized, shall give such assistance to the commission, within the scope of his resources and without interference with his regular duties, as is requested by it.

S. 713.27 Plans to be filed with county recorder

Whenever a county or regional plan is adopted by a city planning commission or the board of county commissioners, the fact of such adoption shall be certified by the adopting authority to the regional or county planning commission, as the case may be. Thereupon such regional or county commission shall deposit a copy of so much of the regional or county plan as is affected by such adoption in the office of the county recorder. If such plan shows a recommendation as to the location of a sewage or garbage disposal plant, such deposit shall not be made until six months after the plan's adoption and when so deposited the copy thereof shall state the action or nonaction of the appropriating authority with respect to the purchase or appropriation of property for such plant, as provided in section 713.25 of the Revised Code.

APPENDIX D

ORDINANCE NO. _____

AMENDING CHAPTER _____ OF THE CODIFIED ORDINANCES OF THE CITY OF _____, OHIO, AND ENACTING SECTION _____ OF THE CODIFIED ORDINANCES OF THE CITY OF _____, OHIO, ESTABLISHING A SCHEDULE OF FEES IN ACCORDANCE WITH SECTION _____ OF ORDINANCE NO. _____, THE ZONING ORDINANCE.

WHEREAS it is necessary and reasonable to provide for the collection of fees or charges for administrative services and activities performed in conjunction with the discharge of duties and the provision of such services as required by Ordinance No. _____, the Zoning Ordinance; and

WHEREAS Section 1351 of Ordinance No. _____ requires that the City Council shall establish by ordinance a schedule of such fees with respect to the administration of Ordinance No. _____, the Zoning Ordinance; and

WHEREAS City Council has reviewed the recommendations of the Zoning Administrator concerning such fees and charges with respect to the administrative costs of providing such services and performing such activities;

NOW, THEREFORE, BE IF ORDAINED BY THE COUNCIL OF THE CITY OF _____, OHIO:

SECTION 1: That Chapter _____ of the Codified Ordinances of the City of _____ is hereby amended by the addition of Section _____, which shall read as follows:

SECTION _____:

(a) In accordance with the provisions of Section 1351 of Ordinance No. _____, the following fees are established:

1.	Copy of Zoning Permit, Certificate of Occupancy, or similar document	$ 3.00
2.	Copy of Official Zoning Map	5.00
3.	Division of Land, per lot	5.00
4.	Major Division of Land	25.00
5.	Vacation of Street or Dedication of Street	100.00
6.	Rezoning to R-1, R-2, R-4, R-8 Rezoning to R-12, R-16, R-30, R-45 Rezoning to any other District	50.00 150.00 250.00
7.	Conditional Zoning, Substantially Similar Zoning	50.00

8.	Variance	50.00
9.	Appeal from Administrative Decision	30.00
	Reopening of an Appeal	20.00
10.	Site Plan Review for site ten (10) acres or less	75.00
	Site Plan Review for site exceeding ten (10) acres	150.00
11.	Application for Amendment to Ordinance or Map	50.00
12.	Application for Temporary Use Permit	20.00
13.	Application for Satellite Dish Antenna Permit	20.00
14.	Application for Planned Unit Development District	250.00

(b) Such fees shall be waived under the following circumstances:

1. When an appeal is made by a political subdivision or instrumentality thereof;

2. When an appeal is the result of property acquisition by a political subdivision;

3. (Add other circumstance)

(c) Such fees as appropriate may be reduced or waived by the Board of Zoning Appeals or the Planning Commission upon the written recommendation of the Zoning Administrator.

(d) Payment of a Site Plan Review fee shall preclude payment of a fee for conditional zoning or substantially similar zoning.

(e) All fees shall be paid by cash or check and shall not be refundable.

(f) The Zoning Administrator shall maintain records of the payments of all such fees, and shall deposit them in the account established for such purpose.

SECTION 2:

That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public health, peace, safety and welfare, and for the further reason that these regulations must take effect immediately in order to assure that all of the requirements and procedures established by Ordinance No. _____ shall be carried out as therein stipulated and required; wherefore, this Ordinance shall go into full force and effect immediately upon its passage and approval by the Mayor.

PASSED this _____ day of _____, 19____.

_____
President of Council

ATTEST:

_____
Clerk of Council

APPROVED this _____ day of _____, 19____.

_____
Mayor

APPENDIX E

SAMPLE ZONING FORMS

FORM NO.:	
1	Application For Zoning Permit
2	Zoning Permit (Placard)
3	Revocation of Zoning Permit
4	Application for Certificate of Occupancy
5	Statement of Zoning Violation
6	Notice of Zoning Violation
7	Stop - Zoning Violation (Placard)
8	Application for Appeal
9	Application for Variance
10	Application for Conditional Use Permit
11	Application for Temporary Use Permit
12	Application for Zoning Amendment
13	Notice of Public Hearing to Newspaper
14	Notice of Public Hearing to Property Owner

Form No. 1

APPLICATION FOR ZONING PERMIT

_____, Ohio

Application No. _____

The undersigned applies for a zoning permit for the following use, said permit to be issued on the basis of the information contained within this application. The applicant hereby certifies that all information and attachments to this application are true and correct. The applicant is required, in addition to the information requested on this form to submit plans, in triplicate and drawn to scale, showing the actual dimensions and shape of the lot, exact sizes and locations of existing buildings on the lot, and the location and dimensions of the proposed buildings or alterations.

1. **Locational Description:** Subdivision Name: _____

   Section _____ Township _____ Range _____

   Block _____ Lot No. _____
   (If not located in platted subdivision attach a legal description)

2. **Name of Owner:** _____

   Mailing Address _____

   Phone Number: Home _____ Business _____

3. **Existing Use:** _____

4. **Property Presently Zoned As:** _____

5. **Proposed Use:**

   New Construction _____ Business _____

   Remodeling _____ Industry _____

   Accessory Building _____ Sign _____ Size _____

   Residence _____ No. of Units _____ Other (Explain) _____

   _____

   (If proposed use is business or industry enclose a detailed description of the nature of the business or industry)

6. **Type of Sewage Disposal:** _____

7. **Percentage of lot to be occupied:** _____%

8. **Lot:** Width _____ Lot Depth _____ Lot Area _____

9. **Square Feet:** of Living Area (Residences) _____ sq. ft.

   Garage _____ Basement _____ Accessory Bldg. _____

   Commercial _____ Industrial _____ Office _____

10. **Building Heights:** Stories _____ Feet _____

11. **Yard Dimensions:** Front _____ Rear _____

    One Side _____ Sum of Side Yards _____

12. **Accessory Building Dimensions:** Height _____ Side of Dimensions _____

13. **Number of Off-Street Parking Spaces to be Provided:** _____

14. **Number of Off-Street Loading Berths to be Provided:** _____

15. On a separate sheet attach a list of other supplemental requirements or conditions that will be met, or explain any points you feel need clarification.

Note: This permit shall be void if work is not started within one year or completed within $2\frac{1}{2}$ years.

Signature: _____ **Date:** _____

(For Official Use Only)

Date Received: _____ **Fee Paid:** _____

Date of Action on Application: _____ **Approved:** _____ **Denied:** _____

If application denied, reason for denial: _____

_____

_____

_____

_____
Zoning Administrator

ZONING PERMIT

No. _____

Issued To _____

Address _____

_____

Description Of Use _____

_____

Zoning Classification _____

Date _____ _____

Zoning Administrator

Note: This Permit Must Be Posted On The Premises

178
Form No. 2

Form No. 3

REVOCATION OF ZONING PERMIT

To: _____ Date: _____

_____

_____

_____

You are hereby advised that for the reason that: _____

_____

_____

_____

_____

_____

Zoning Permit No. _____ issued on _____ 19___, is herby revoked and declared to be null and void.

Further alteration or change in the use of any land or building must cease until a valid zoning permit has been obtained. Further alteration or change is punishable under Section 1450 of the zoning ordinance (resolution). Section 1450 states: "Any person who violates this ordinance (resolution) or fails to comply with any of its requirements, shall upon conviction thereof, be fined not more than $100 and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense."

Please contact this office so we may discuss this matter.

_____, Ohio

_____

Zoning Administrator

Form No. 4

APPLICATION FOR CERTIFICATE OF OCCUPANCY

_____, Ohio

Before any building may be occupied or land utilized, it is necessary for the zoning inspector to certify that the construction is in accordance with the zoning ordinance (resolution) and the previously approved **Application for Zoning Permit.** Approximately one week prior to the completion of construction, mail this form to the zoning inspector. If the construction was completed in accordance with the approved zoning permit, he will approve the **Certificate of Occupancy** and return it to you. **Temporary Certificates of Occupancy** may be issued for a period not to exceed six (6) months.

To: ZONING INSPECTOR

The undersigned requests issuance of a **Certificate of Occupancy** for the premises as described in **Zoning Permit Application No. _____, issued on _____, 19___.** To the best of our knowledge all construction has been in conformance with the approved zoning permit.

Date: _____ Applicant _____

- -

(For Official Use Only)

Upon the basis of **Zoning Permit Application No.** _____ issued on _____, 19___ and made a part hereof by reference, the proposed change (is, is not) found to be in conformance with the **Zoning Ordinance (Resolution)** and this **Certificate** is hereby (approved, denied) for the _____ District.

Date Application Received: _____

Date of Action on Application: _____

Date of Expiration if Temporary Certificate: _____, **19___**

If Denied, Reason for Denial: _____

_____

_____

_____

_____

Zoning Administrator

Note: This form to be filed in triplicate

Form No. 5

STATEMENT OF ZONING VIOLATION

This Statement is voluntarily given to the _____ **Zoning Inspector** this _____ day of _____, 19___, with the understanding that he may initiate legal proceedings in a court of competent jurisdiction charging _____ with violating the _____ **Zoning Ordinance (Resolution).**

In the event such legal proceedings are initiated, I will appear to testify in court to the facts stated in the following statement.

Date: _____ **Signature:** _____

Address: _____

Prior to _____, 19___ the property located at _____ _____ was being used for _____ _____. On _____, 19___ I noticed that the above described property was being used for _____ _____, and in my opinion this use is in violation of **Section(s)** _____ **of the** _____ **Zoning Ordinance (Resolution).**

Describe below the uses being made of the property; give exact date and time where possible.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Form No. 6

NOTICE OF ZONING VIOLATION

To: _____ Date: _____

_____

_____

You are hereby advised that you are in violation of the _____ **Zoning Ordinance (Resolution).** The nature of this violation is as follows: ___

_____

_____

_____

_____

_____

_____

_____

_____

You are further informed that unless this violation is corrected or otherwise made to comply by _____, 19___, you will be subject to the penalty as provided by Section 1450 of the _____ **Zoning Ordinance (Resolution).**

Section 1450 provides, in part, that: "Any person who violates this ordinance (resolution) or fails to comply with any of its requirements, shall upon conviction thereof, be fined not more than $100 and in addition shall pay all costs involved in the case. Each day such violation continues shall be considered a separate offense."

Please contact this office so that we may discuss this violation.

_____, Ohio
Planning (Zoning) Commission

_____
Zoning Administrator

STOP

ZONING VIOLATION

Nature Of Such Violation Being: _____

_____

_____

_____

_____ **OHIO**

Date _____

_____

Zoning Administrator

Note: Any person who violates this (ordinance, resolution) or fails to comply with any of its requirements, shall, upon conviction therefore, be fined not more than $100 and, in addition, shall pay costs and expensed involved in the case. Each day such violation continues shall be considered a separate offense

Form No. 8

APPLICATION FOR APPEALS
BOARD OF ZONING APPEALS

_____, Ohio

Application No.: _____

Name of Applicant: _____

Mailing Address: _____

Phone Number: Home: _____ Business: _____

The undersigned requests review of the decision by the Zoning Administrator of **Application for Zoning Permit No.** _____, denied (issued) on _____, 19____. It is the applicant's contention that the following error was made in the determination of the Zoning Administrator:

_____

_____

_____

_____

_____
Applicant

For Official Use Only

Date Filed: _____

Date of Notice to Parties in Interest: _____

Date of Notice in Newspaper: _____

Date of Public Hearing: _____

Fee Paid $ _____

Decision of Board of Zoning Appeals: Approved: _____ Denied: _____

If Approved the following conditions and safeguards were prescribed:

1. _____
2. _____
3. _____

4. _____

5. _____

6. _____

If Denied, reason for denial _____

_____

_____

_____

_____

_____

_____

Date: _____ _____

Board of Zoning Appeals Chairman

Note: One (1) copy to be filed with the Zoning Administrator and two (2) with the Board of Zoning Appeals.

Form No. 9

APPLICATION FOR VARIANCE
BOARD OF ZONING APPEALS
_____, Ohio

Application No. _____

Name of Applicant: _____

Mailing Address: _____

Phone Number: Home: _____ Business: _____

1. **Locational Description:** Subdivision Name: _____

   Section _____ Township _____ Range _____

   Other Designation _____ Block _____ Lot No. _____

   (If not in a platted subdivision attach a legal description)

2. **Nature of Variance:** Describe generally the nature of the variance _____

   _____

   _____

   In addition, plans in triplicate and drawn to scale must accompany this application showing dimensions and shape of the lot, the size and locations of existing buildings, the locations and dimensions of proposed buildings or alterations, and any natural or topographic peculiarities of the lot in question.

3. **Justification of Variance:** In order for a variance to be granted, the applicant must prove to the Board of Zoning Appeals that the following items are true: (Please attach these comments on a separate sheet)

   a. special conditions exist peculiar to the land or building in question;
   b. that a literal interpretation of the ordinance (resolution) would deprive the applicant of rights enjoyed by other property owners;
   c. that the special conditions do not result from previous actions of the applicant; and
   d. that the requested variance is the minimum variance that will allow a reasonable use of the land or buildings.

I certify that the information contained in this application and its supplements is true and correct.

Date _____ _____

Applicant

Form No. 10

APPLICATION FOR CONDITIONAL USE PERMIT
Board of Zoning Appeals
_____, Ohio

Application No. _____

The undersigned requests a conditional use permit for the use specified below. Should this application be approved, it is understood that it shall only authorize that particular use described in this application and any conditions or safeguards required by the Board. If this use is discontinued for a period of more than six (6) months, this permit shall automatically expire.

1. **Name of Applicant** _____
   Mailing Address _____
   Phone Number Home _____ Business _____

2. **Locational Description:** Subdivision Name _____

   Section _____ Township _____ Range _____

   Block _____ Lot No. _____

3. **Existing Use** _____

4. **Zoning District** _____

5. **Description of Conditional Use** _____

   _____

6. **Supporting Information:** Attach a plan for the proposed use (in triplicate) showing the location of building, parking and loading areas, traffic access and circulation drives, open space, landscaping, utilities, signs, yards, and refuse and service areas. Also attach a narrative statement relative to the above requirements and also explain the economic, noise, glare, and odor effects on ajoining property and the general compatibility with adjacent and other properties in the district.

Date _____ _____
Applicant

- -

For Official Use Only

Date Filed _____

Date of Notice to Parties in Interest: _____

Date of Notice to Newspapers _____

Date of Public Hearing _____

Form No. 11

APPLICATION FOR TEMPORARY USE PERMIT
_____, Ohio

Application No. _____

The undersigned applies for a temporary use permit for the use and the time period specified, such permit to be issued on the basis of the information contained within this application. The applicant hereby certifies that all information herein and attachments hereto are true and correct.

1. **Locational Description:** Attach a graphic description of the property on which the temporary use is proposed to occur, to include a site plan depicting the yard(s), setback(s), parking facilities, and sanitary facilities, and the location of the temporary use proposed.

2. **Name of Owner:** _____

   Mailing Address _____

   Phone Number: Home _____ Business _____

3. **Existing Use:** _____

4. **Property Presently Zoned As:** _____

5. **Description of Proposed Temporary Use:** _____

   _____

   _____

6. **Date(s) of Proposed Temporary Use:** _____

7. **Name of Applicant/Organization:** _____

   Mailing Address: _____

   Phone Number: Home _____ Business _____

   Vendor's License Number: _____ (attach photocopy)

Signature: _____ **Date:** _____

-OVER-

- -

(For official Use Only)

Date Received: _____ **Fee Paid:** _____

Date of Action or Application: _____ **Approved:** _____ **Denied:** _____

If denied, reason for denial: _____

_____

_____

_____

_____

_____
Zoning Administrator

Form No. 12

APPLICATION FOR ZONING AMENDMENT
_____, Ohio

Application No. ____

The undersigned, owner(s) of the following legally described property hereby request the consideration of change in zoning district classification as specified below:

1. **Name of Applicant** _____
   Mailing Address _____
   Phone Number Home _____ **Business** _____

2. **Locational Description:** Subdivision Name _____

   Section _____ Township _____ Range _____

   Block _____ Lot No. _____

   (If not located in a subdivision attach legal description)

3. **Existing Use** _____

4. **Present Zoning District** _____

5. **Proposed Use** _____

6. **Proposed Zoning District** _____

7. **Supporting Information:** Attach the following items to the application:

   a. A vicinity map showing property lines, streets, and existing and proposed zoning.
   b. A list of all property owners and their mailing addresses within, contiguous to, and directly across the street from the proposed rezoning.
   c. A statement of how the proposed rezoning relates it to the Comprehensive Plan.
   d. The proposed amendment to the zoning map or text in ordinance (resolution) form, approved as to form by the City (Village, County, Township) Legal Advisor.

Date _____ _____

_____ **Applicant**

- -

For Official Use Only
(Planning Commission)

_____ **Planning (Zoning) Commission**

Date Filed _____

Date of Notice in Newspaper _____

Date of Notice to Adjacent Property Owner _____

Fee Paid $ _____

Decision of Board of Zoning Appeals: _____

If approved the following conditions and safeguards were prescribed:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

If Denied, reason for denial _____

_____

_____

_____

_____

_____

_____

Date _____ _____Board of Zoning Appeals

_____ Chairman

Note: One (1) copy to be filed with the Zoning Administrator and (2) with the Board of Zoning Appeals.

Form No. 13

NOTICE OF PUBLIC HEARING TO NEWSPAPER

_____
(name of body)

_____, Ohio

The _____ will hold a public hearing on an application
(name of body)

for a proposed _____ on the _____ day of _____, 19___
(type of application)

at _____ A.M. (P.M.) at _____. The application,

submitted by _____ requests that _____
(applicant's name) (summary of application)

_____

_____

_____

be granted for the property located at _____

_____.

(The _____ Zoning Commission will, within 30 days after the hearing,

refer to the _____ Board of County Commissioners [City Council,

Board of Township Trustees] a recommendation on the proposed amendment.)

_____
(name of body)

_____
(Chairman, Clerk)

- -

For Newspaper Only

Publish the above Notice on the following dates:

_____

_____

_____

and charge to _____

_____

_____

Date of Public Hearing _____

Fee Paid $ _____

Recommendation of Planning (Zoning) Commission: Approval _____ Denial _____

Reason for Recommendation _____

_____

_____

_____

_____
Planning (Zoning) Commission

Date _____ **Chairman** _____

- -

For Official Use Only
(Legislative Authority)

Date of Recommendation Received _____

Date of Notice in Newspaper _____

Date of Public Hearing _____

Action of Legislative Authority Approval _____ Denial _____

If Denied, reason for denial _____

_____

_____

_____

Date _____

_____
Clerk

Note: Three copies of this form and supporting information must be filed with the _____ **Planning (Zoning) Commission.**

Form No. 14

NOTICE OF PUBLIC HEARING TO PROPERTY OWNER

_____
(name of body)

_____, Ohio

TO: _____ Date: _____

_____

_____

Dear _____:

This is to inform you that the _____ will hold a public
(name of body)
hearing on an application for a(n) _____ on the _____
(type of application)
day of _____, 19___ at _____ A.M. (P.M.) at _____
(location)
_____.

This application, submitted by _____,
requests that _____
(summary of application)
_____
_____
_____

be granted for the property located at _____

_____

_____
(Name of Body)

_____
(Chairman, Clerk)

In the case of public hearings held by the _____ Zoning Commission on proposed amendments the Zoning Commission will refer to the Board of County Commissioners (Board of Township Trustees) a recommendation within 30 days of the hearing.

APPENDIX F

SAMPLE RULES FOR BOARD OF ZONING APPEALS

RULES AND REGULATIONS OF THE BOARD OF ZONING ADJUSTMENT
CITY OF COLUMBUS, OHIO

(Adopted by the Board of Zoning Adjustment on January 28, 1986 and published in the City Bulletin on February 15, 1986, Division of Regulation, Jobs Development, 140 Marconi Blvd., Columbus, Ohio)

1. DATE OF MEETING

The Board shall hold a regular meeting on the fourth Tuesday of each month. In those instances where the fourth Tuesday of a month is a holiday or follows a holiday, the regular meeting shall be scheduled for the third Tuesday of that month. The hour and place of the meeting shall be 6:00 P.M., Hearing Room, Eighth Floor, 140 Marconi Boulevard, unless otherwise specified at least seven (7) days prior to the meeting.

2. PUBLIC MEETINGS

In accordance with Chapter 121 of the Columbus City Codes, all meetings of the Board shall be open to the public and no action of the Board shall take place in executive session. The Board shall not hold a special meeting unless it gives at least twenty-four (24) hours advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action. In the event of an emergency, the member or members calling the meeting shall notify the news media that have requested notification immediately of the time, place and purpose of the meeting.

3. QUORUM

A majority of the five (5) members of the Board shall constitute a quorum, and when only three (3) members are present, the unanimous vote of all three (3) shall be required to take an affirmative action.

4. NOTICE OF PUBLIC HEARING

A notice of public hearing shall be mailed at least ten (10) days before a regular meeting to each applicant, to each member of the Board and, in special permit and variance cases, to each owner of property within 125 feet of the subject premises as listed in the applicant's affidavit. The notice of public hearing shall be published once in the City Bulletin of the City of Columbus at least seven (7) days before the regular meeting.

5. ATTENDANCE OF THE APPLICANT REQUIRED

An applicant or the applicant's attorney shall attend the meeting. The Board will dismiss, without hearing, an application if the applicant or the applicant's attorney does not attend. If the applicant or the applicant's attorney is not in attendance at a meeting, the Board may move to consider the case in those circumstances where a dismissal without hearing would constitute a hardship for the surrounding property owners or other interested individuals.

6. REQUEST TO TABLE APPLICATION

An application shall be tabled upon written request of the applicant submitted not less than ten (10) days before the date of the meeting at which the application is scheduled to be heard. Any request to table an application submitted later than ten (10) days before the date of the scheduled meeting may be granted by the Board at its discretion.

7. WITHDRAWAL

An application may be withdrawn only if the applicant submits a letter requesting the withdrawal not less than ten (10) days before the meeting or requests same at the scheduled hearing.

8. APPLICATION

An application for a hearing before the Board of Zoning Adjustment for a variance, appeal or special permit shall be submitted to the Division of Regulation at least four (4) weeks before the next regular meeting and in conformance with the cut-off dates as scheduled by that Division. The application shall be complete and shall contain a completed Board approved application in compliance with C.C.3307.07, the affidavit listing the owners of all property located within 125 feet of the subject property, an official map showing the location of the premises, a site plan and sufficient drawings to clearly delineate the proposed development. The site plan shall not exceed 8 1/2" x 14" in overall dimensions and shall provide the information required in the application form as provided by the Division of Regulation. Where the Division of Regulation considers it necessary, the drawings submitted shall include floor plans and elevations. The staff of the Division of Regulation may waive the size requirement of the plan if, in the judgment of the staff, a large development could not reasonably be delineated on an 8 1/2" x 14" sheet.

9. DUTIES OF THE JOBS DEVELOPMENT DEPARTMENT

The Administrator of the Division of Regulation shall cause a report to be prepared on each case to be heard by the Board; record the proceedings of the Board; maintain the official journal of the Board's proceedings; cause the orders of the Board to be issued; and provide for such other professional and clerical assistance as may be necessary. The record of the proceedings and the offical journal shall be maintained in the office of the Division of Regulation. The Administrator of the Division of Regulation shall submit a written report to the Board on each Zoning Code violation order appealed to the Board and shall represent the City in such appeal cases before the Board.

10. DUTIES OF THE DIVISION OF REGULATION

The Division of Regulation, in accordance with Section 3305.01 of the Zoning Code, shall enforce orders of the Board.

11. EFFECTIVE DATE OF THE ORDER

An order of the Board shall be effective immediately. A copy of the order shall be mailed to the applicant.

12. ONE YEAR LIMITATION

All variances and special permits, unless otherwise specified by the Board, shall be void one (1) year after the date issued unless extended by the Board or unless prior to that time an affirmative action by the applicant has commenced, e.g., a building permit obtained in those situations where such a permit is required or actual use of the property has been initiated in accordance with the variance or special permit in the situation where no building permit is required.

13. THE OFFICAL JOURNAL

The official journal of the Board to be maintained by the Division of Regulation shall contain the original order signed by the members of the Board and shall contain one copy of the report of the Division of Regulation to the Board of each application.

14. RECONSIDERATION

All actions of the Board of Zoning Adjustment shall be final. The Board shall accept applications for reconsideration only upon its own motion and for good cause shown. The Division of Regulation is permitted to accept an application on a property on which previous Board Action was taken only when the application indicates that either the plans submitted or the conditions affecting the property have substantially changed.

15. MEETING PROCEDURE

The following is the general format to be used at all public hearings before the Board of Zoning Adjustment for variances, special permits and appeals from Zoning Code violation orders:

a) Each case shall be called separately and heard in the order listed on the current agenda.

b) All persons who will give evidence in a case shall take the following oath:

Do you swear or affirm to tell the truth, the whole truth and nothing but the truth?

c) A representative of the Jobs Development Department shall make an oral report of the case to the Board consisting of a statement of the particular relief sought by the application and a brief summary of the facts surrounding the case.

d) The applicant or the applicant's attorney shall proceed with a presentation of evidence which may include oral testimony, affidavits, depositions, maps, drawings, photographs, and any other documents or material relevant to the purpose of the hearing. The applicant may also call witnesses and question opponents. Applicant shall be expected to present evidence which authorizes the Board to grant the particular relief requested.

e) The Jobs Development Department representative shall proceed next with a presentation and may comment on the applicant's presentation, may question the applicant and witnesses called by the applicant, may call additional witnesses, and may present additional evidence.

f) In cases which are variances or special permits but not appeals, persons other than the applicant, Department representatives and witnesses, may be permitted to speak if relevant to the outcome of the case and shall be heard if the outcome of the case might affect the property rights of such persons.

g) The applicant shall be given the opportunity to rebut evidence offered in opposition to the applicant's case and to give a final presentation to the Board.

h) Board members may ask questions at any time. The applicant and Job Development Department representative may ask questions only as a part of their respective presentations; at other times, questions shall be directed to the Chairman of the Board who may then redirect the question to the party requested to answer.

i) Hearings are intended to be informal. Therefore, strict rules of evidence shall not apply and procedures may vary somewhat as necessary to help ensure the applicant a fair hearing. The purpose of a hearing is to bring out sufficient information to permit the Board to arrive at a just result. In those questions of procedure which are not covered by the above rules and regulations, Robert's Rules of Order (Newly Revised) shall govern. (2-15;2-22)

APPENDIX G

RULES AND REGULATIONS OF THE DEVELOPMENT COMMISSION OF THE CITY OF COLUMBUS, OHIO

The Development Commission of the City of Columbus, Ohio, hereinafter referred to as the Commission, constituted pursuant to C.C. 3101.01, adopts these rules and regulations to govern its proceedings in accordance with C.C. 121.02.

SECTION 1. OFFICERS AND MEMBERS

A. Each September the Commission shall elect a chairperson and vice chairperson at its first regular meeting. Such officers shall be entitled to vote and shall each hold office for one year or until a successor is elected.

B. Should the office of chairperson or vice chairperson become vacant, the Commission shall elect a successor from its membership within the next two regular meetings. The Commission may elect an interim officer, if necessary.

C. The Director of the Department of Development or the Director's designee shall serve until a successor is appointed.

D. Upon expiration of a Commission member's term, such member may continue to serve until a successor is appointed.

SECTION II. MEETINGS

A. The Commission shall hold one regular meeting on the second Thursday of each month to hear applications for amendment of the Zoning Map and to perform such other responsibilities as are required by the Zoning Code. If the second Thursday is a holiday, the meeting shall be held on the third Thursday or on another date acceptable to the Commission.

B. The Commission shall hold a second meeting, if needed, on the fourth Thursday of each month or on some other date set by the Commission to consider items of a planning and/or policy nature and any proposal for amendment of the Zoning Code.

C. Each regular meeting shall be held at 6:00 p.m. in the large conference room on the 8th floor of the Marconi Building, 140 Marconi Boulevard, unless otherwise specified at least seven (7) days prior to the meeting. Notice shall be published in the City Bulletin prior to the meeting.

D. A special meeting may be called by the chairperson or by any four (4) members of the Commission by notifying the Planning Administrator and each member of the Commission. The Commission shall give at least forty-eight (48) hours notice to the news media that have requested notification except in an emergency requiring immediate official action. In the event of such an emergency, the member or members calling the meeting shall notify the new media that have requested notification of the time, place and purpose of such meeting. Notice of special meetings shall be published in the City Bulletin whenever practical. If prior notice was not practical, notice shall be published immediately following the meeting and shall specify all actions taken.

E. All meetings shall be conducted in accordance with Robert's Rules of Order, Newly Revised, except as otherwise provided in these rules and regulations. A quorum shall consist of four (4) members of the Commission which shall be the minimum number permitted to conduct business. An affirmative vote of a majority of the members in attendance shall be required for action. Failure of an item to receive a majority vote shall constitute disapproval. When a quorum is lacking, staff shall postpone or cancel items requiring a vote and may proceed with items presented for information only.

F. All meetings of the Commission shall be open to the public and no action shall take place in any executive session or by vote prior to any meeting.

G. The chairperson may limit the number of persons who may speak regarding any agenda item to not fewer than three persons for and three persons against such item and may limit the amount of time each may speak to not less than three minutes per person or, in the alternative, may limit the total amount of time for support of an agenda item to not less than nine minutes and total amount of time for opposition to an agenda item to not less than nine minutes.

H. A record of the Commission's proceedings shall be maintained by the Department of Development.

SECTION III. COMMISSION ACTIONS

A. Pursuant to C.C. 3307.02 and 3317.03 every Commission recommendation to City Council regarding amendment of the Zoning Map shall be accompanied by a statement of the Commission's reasons therefor. Unless the Commission specifies otherwise, the staff report to Council shall constitute such statement.

B. The Commission may table an agenda item at any time. The consent of the applicant will usually be sought prior to such action. No application shall remain tabled for more than six months without action by the Commission.

C. The Commission, in the absence of the applicant or the applicant's representative at the meeting for which the subject application is scheduled and for which public notice has been given to the applicant and to the public, may hear, withdraw or table such application at its option.

D. Any application previously acted upon and not significantly changed thereafter shall not be reconsidered unless referred back to the Commission by City Council or staff. An application proposed to be significantly changed by the applicant after a previous Commission hearing shall be referred by the Department of Development back to the Commission. Any amendment proposed at a meeting without prior staff review may, at the request of staff, be tabled with or without the applicant's consent and referred to staff for review.

E. Prior to submission to City Council, staff shall reschedule before the Commission any pending application on which one year has elapsed since it was last heard by the Commission.

SECTION IV. DIVISION OF PLANNING

A. Pursuant to C.C. 3317.03 the Division of Planning shall prepare a report and recommendation to the Commission on each application to amend the Zoning Map.

B. Each application for amendment of the Zoning Map shall be submitted to the Division of Planning no less than thirty-six (36) days before the Commission meeting at which it is to be considered. The application shall conform to Chapter 3317 requirements, as amended from time to time, and to the instructions on the form provided.

C. Notice of public hearing before the Commission shall be mailed by the Division of Planning to the applicant, each owner of the parcel or parcels to be rezoned, and each owner of property within 125 feet of the boundaries of the property to be rezoned, all as listed on the affidavit submitted by the applicant, at least seven (7) days prior to the regular meeting at which such hearing on rezonings is to be held. In addition, notice of public hearings shall be published once in the City Bulletin at least seven (7) days before such meeting. One published notice may suffice for the requirements of both Section II and Section IV.

SECTION V. ATTENDANCE

A. The chairperson shall encourage regular and timely attendance by each Commission member. Except in an unforeseen emergency, each Commission member is responsible for notifying the Planning Administrator of any inability to attend any Commission meeting.

B. Pursuant to C.C. 3101.01, the Commission may request that the Mayor revoke the appointment of any member who fails to attend seventy-five percent (75%) of all regularly scheduled meetings per year or who fails to attend any two regularly scheduled meetings in one year without excuse acceptable to a majority of the other members of the Commission.

SECTION VI. MID-OHIO REGIONAL PLANNING

A. In accordance with Article II of the Bylaws of the Mid-Ohio Regional Planning Commission, hereinafter referred to as MORPC, the Commission shall appoint three representatives of the City to MORPC; each is to serve a three-year term. These representatives need not be members of the Commission, but shall be residents of the City of Columbus.

SECTION VII. SUSPENSION OR AMENDMENT OF RULES

A. These rules and regulations may be suspended only upon the affirmative vote of no fewer than five (5) members.

B. These rules and regulations may be amended from time to time by a majority vote of the entire membership of the Commission. Such amendment shall be effective on the tenth day after it is promulgated by publication in the City Bulletin pursuant to C.C. 121.05.

SECTION VIII. CERTIFICATION

A. Immediately upon adoption, these rules and regulations shall be certified by the secretary and attested to by the chairperson. A certified copy thereof shall be submitted by the secretary to the City Clerk for filing and publication in the City Bulletin within twenty (20) days thereafter in accordance with C.C. 121.05.

SECTION IX. REPEAL OF PREVIOUS RULES AND REGULATIONS

A. All rules and regulations previously adopted by the Development Commission are hereby repealed and declared to be void and of no further effect on and after the tenth day following the publication hereof in the City Bulletin.

Adopted this _____ day of _____.

_____, Secretary.

Attest:

_____, Chairperson

I hereby certify that the foregoing is a true and exact copy of the rules and regulations adopted by resolution of the Development Commission of the City of Columbus, Ohio at its regular meeting held on October 20th 1983, following a public hearing for which public notice was given in the regular manner and at which a quorum was present.

_____
Secretary of Commission.

APPENDIX H

DRUG PARAPHERNALIA ESTABLISHMENTS

1000.40 PROHIBITION OF DRUG PARAPHERNALIA ESTABLISHMENTS

In addition to all other regulations in this Ordinance (Resolution) and in (specify code), the following provisions shall apply to the location of drug paraphernalia establishments in this City (County, Township, Village).

1000.41 Purpose

It is the purpose of Sections 1000.40 to 1000.43 inclusive of this Ordinance (Resolution) to promote and protect the health, safety and welfare by prohibiting the location of drug paraphernalia establishments within this City (Village, Township, County). It is further the intent of these Sections to establish penalties under this Ordinance (Resolution) for the illegal location of such establishments, in addition to the criminal penalties relating to their operation or establishment in (specify code).

1000.42 Definitions

The following definitions shall apply in the interpretation of this Ordinance (Resolution):

"Drug Paraphernalia Establishment" means any place or any part of a place, whether or not operated as a business, within a building structure, or dwelling, or any parcel located within the City (Village, Township, County) where drug paraphernalia, as defined in this Article, are manufactured, stored, displayed, processed, packaged, distributed, offered for sale, or sold. "Drug Paraphernalia Establishment" does not include manufacturers, wholesalers, retailers, pharmacies, or other persons or buisnesses or professions acting in accordance with the provisions of Ohio Revised Code Chapters 3719, 4715, 4729, 4731, and 4741, or properly licensed or authorized research facilities or hospitals.

"Drug Paraphernalia" means all devices, equipment, products, and materials of any kind which are used, intended for use or designed for use in planting, proagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, enhancing the effect of or otherwise introducing into the human body a controlled substance as defined in Chapter 3719, Ohio Revised Code. It includes, but is not limited to:

a. Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a cotrolled substance or from which a controlled substance can be derived.

b. Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances.

c. Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.

d. Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances.

e. Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.

f. Diluents and adulterants, such as quinine hydrochloride, mannitol, rannite, dextrose and lactrose, used, intended for use, or designed for use in cutting controlled substances.

g. Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise clearing or refining marijuana or similar substances.

h. Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in packaging small quantities of controlled substances.

i. Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.

j. Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances.

k. Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.

l. Objects or devices used, intended for use, or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil or other controlled substance into the human body, such as: metal, wooden, acrylic, glass, stone, plastic, ceramic pipes with or without a screen, permanent screens, hashish heads, or punctured metal bowls; water pipes; smoking masks or carburetion tubes, pipes, masks, or devices; chamber pipes, electric pipes, air-driven pipes, ice pipes or chillers; chillums; bongs; miniature cocaine spoons or cocaine vials; roach clips; or similar devices or objects.

In determining whether a specific object or device is drug paraphernalia as herein defined, the following factors may be considered: instructions, descriptive materials, or advertising accompanying the object or device; statements by the owner or other direct or circumstantial evidence concerning its use, proposed use, or proposed sale; the propimity of any controlled substance to the object or device, or the presence of any controlled substance residue on the object or device; the manner in which it is displayed or offered for sale; expert testimony concerning its use.

1000.43 Drug Paraphernalia Establishments As Prohibited Uses

Drug Paraphernalia Establishments as herein defined are and shall be prohibited uses within all districts within this City (Village, Township, County). Any person who establishes, operates, or maintains a drug paraphernalia establishment, or instigates or participates in such action, shall be in violation of this Section and shall be guilty of a misdemeanor of the first degree, in addition to any other penalities specified in this Ordinance (Resolution) and in (specify code).

APPENDIX I

SAMPLE FLOOD DAMAGE PROTECTION REGULATIONS

1104.1 PURPOSE

It is the purpose of this ordinance to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(a) protect human life and health;
(b) minimize expenditure of public money for costly flood control projects;
(c) minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
(d) minimize prolonged business interruptions;
(e) minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazards;
(f) help maintain a stable tax base by providing for the proper use and development of areas of special flood hazard so as to minimize future flood blight areas;
(g) ensure that potential buyers are notified that property is in an area of special flood hazard; and,
(h) ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

1104.02 DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

(a) "Accessory structure" means any use or structure subordinate to the principal use of a building on the same lot and serving a purpose customarily incidental to the use of the principal use.
(b) "Alteration of watercourse" means any action that serves to increase or decrease the carrying capacity of a watercourse.
(c) "Appeal" means a request for a review of the Zoning Administrator's interpretation of any provision of this ordinance or a request for a variance.
(d) "Area of special flood hazard" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.
(e) "Base flood" means the flood having a one percent chance of being equalled or exceeded in any given year.

(f) "Beginning of construction" means the incorporation of labor and material on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. Permanent construction does not include land preparation, such as clearing, grading, and filling, nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not as part of the main structure. For a structure without a basement or poured footings, the "beginning of construction" includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation.

(g) "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, spacing, excavation or drilling operations located within the area of special flood hazard.

(h) "Federal Emergency Management Agency (FEMA)" means the agency with the overall responsibility for administering the National Flood Insurance Program.

(i) "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
   (1) the overflow of inland waters, and/or
   (2) the unusual and rapid accumulation or runoff of surface waters from any source.

(j) "Flood Insurance Rate MAP (FIRM)" means an official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

(k) "Flood Insurance Study" means the official report in which the Federal Emergency Management Agency has provided flood profiles, as well as the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

(l) "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one half foot.

(m) "Livable area" means that totally enclosed space within the principal structure for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a "livable area", except in a residential structure a basement shall be considered livable area.

(n) "New construction" means structures for which the "beginning of construction" commenced on or after the effective date of this ordinance.

(o) "Structure" means anything constructed, the use of which requires permanent location on the ground or attachment to something having permanent location on the ground.

(p) "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (1) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(q) "Variance" is a grant of relief to a person from the requirements of this ordinance which permits construction in a manner that would otherwise be prohibited by this ordinance.

(r) "Watercourse" is a definite channel with recognized banks and bottom in which a flow of water occurs.

1104.03 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARDS

The areas of special flood hazard have been identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "Flood Insurance Study for the City of _____, Ohio." This study, with accompanying Flood Boundary and Floodway Maps and Flood Insurance Rate Maps dated _____ and any revisions thereto is hereby adopted by reference and declared to be a part of this ordinance. Additional areas defined by the City of _____ may also be subject to the provisions of this ordinance.

1104.04 COMPLIANCE

No structure or land shall hereafter be located, erected, constructed, repaired, extended, converted, enlarged or altered without full compliance with the terms of this ordinance and all other applicable regulations which apply to uses within the jurisdiction of this ordinance.

1104.05 ABROGATION AND GREATER RESTRICTIONS

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

1104.06 ZONING CERTIFICATE REQUIRED

A Zoning Certificate shall be obtained before construction or development begins within any area of special flood hazard established in Section 1104.03. Application for Zoning Certificate shall be made on forms furnished by the Zoning Administrator, and shall include the following information:

(a) elevation in relation to mean sea level of the lowest floor, including basement of all proposed structures;
(b) elevation in relation to mean sea level to which any proposed structure will be floodproofed;
(c) certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 1104.11(b)(1); and,
(d) description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

1104.07 DESIGNATION OF THE FLOOD DAMAGE PREVENTION ORDINANCE ADMINISTRATOR

The Zoning Administrator is hereby appointed to administer and implement this ordinance by granting or denying Zoning Certificate applications in accordance with its provisions.

1104.08 DUTIES AND RESPONSIBILITIES OF THE ZONING ADMINISTRATOR

Duties of the Zoning Administrator shall include, but are not limited to:

(a) Permit Review
  (1) Review all applications for Zoning Certificates to determine that the permit requirements for this ordinance have been satisfied.
  (2) Review all applications for Zoning Certificates to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.
  (3) Review all applications for Zoning Certificates to determine if the proposed development is located within the designated floodway as indicated in the Flood Boundary and Floodway Map of the Flood Insurance Study. If the proposed development is located within the designated floodway, assure that the encroachment provision of Section 1104.12(a) is met.

(b) Use of Other Base Flood Data
  When base flood elevation data has not been provided by the Federal Emergency Management Agency in accordance with Section 1104.03, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, the Zoning Administrator shall obtain, review, and reasonably utilize any base flood elevation data available from a federal, state, city or other source in order to administer Section 1104.11(a), SPECIFIC STANDARDS, Residential Construction, and 1104.11(b), SPECIFIC STANDARDS, Nonresidential Construction.

(c) Information to be Obtained and Maintained
  (1) Obtain and record the actual elevation (in relation to mean sea level) of the lowest habitable floor, including basement, of all new or substantially improved structures, and whether or not such structures contain a basement.

(2) For all new or substantially improved floodproofed structures:
   (i) verify and record the actual elevation (in relation to mean sea level) to which the structure was floodproofed, and
   (ii) maintain the floodproofing certifications required in Section 1104.06(c).

(3) Maintain for public inspection all records, pertaining to the provisions of this ordinance.

(d) Alteration of Watercourses

(1) Notify adjacent communities and the Ohio Department of Natural Resources, Division of Water, prior to a significant alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency. Normal maintenance of watercourses shall not be considered to be alteration.

(2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

(e) Interpretation of Flood Boundaries

Make interpretations, where needed, using information provided by the City Engineer, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 1104.09.

1104.09 VARIANCE PROCEDURE

(a) Appeal Board

(1) The Board of Zoning Appeals as established by Chapter _____ of the Codified Ordinances of the City of _____ shall hear and decide appeals and requests for variance from the requirements of this ordinance.

(2) The Board of Zoning Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Zoning Administrator in the enforcement or administration of this ordinance.

(3) Upon consideration of the purposes of this ordinance, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

(4) The Zoning Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

(b) Conditions of Variances

(1) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.

(2) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(4) Variances shall only be issued upon a determination that:

(i) there are exceptional or extraordinary circumstances or exceptional conditions applying to the property in general that do not apply generally to other properties in the vicinity;

(ii) failure to grant the variance would result in exceptional hardship to the applicant; and,

(iii) the authorizing of such variance will not be of substantial detriment to adjacent property or the public interest.

(5) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(6) Generally variances may be issued for new construction and substantial improvements to be erected on a lot of one half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing section 1104.09(b) has been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

1104.10 PROVISIONS FOR FLOOD HAZARD REDUCTION - GENERAL STANDARDS

In all areas of special flood hazards the following standards are required:

(a) Anchoring

(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

(b) Construction Materials and Methods

(1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(c) Utilities

(1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,

(3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(d) Subdivision Proposals

(1) All subdivision proposals shall be consistent with the need to minimize flood damage;

(2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
(3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and,
(4) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contains at least five (5) acres.

1104.11 PROVISIONS FOR FLOOD HAZARD REDUCTION - SPECIFIC STANDARDS

In all areas of special flood hazards where base flood elevation data have been provided as set forth in Section 1104.03 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD or Section 1104.08(b), Use of Other Base Flood Data, the following provisions are required:

(a) Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above the base flood elevation.

(b) Nonresidential Construction

(1) New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:
(i) be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
(ii) have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,
(iii) be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Section 1104.06(c).

(2) A variance to the elevation or dry floodproofing standards may be granted for accessory structures (e.g. sheds, detached garages). Such structures must meet the encroachment provisions of Section 1104.12(a) and the following additional standards:
(i) they shall not be used for human habitation;
(ii) they shall be designed to have a low flood damage potential;
(iii) they shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of flood waters;
(iv) they shall be firmly anchored to prevent flotation; and,
(v) service facilities such as electrical and heating equipment shall be elevated or floodproofed.

1104.12 PROVISIONS FOR FLOOD HAZARD REDUCTION - FLOODWAYS

Located within areas of special flood hazard established in Section 1104.03 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

(a) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless a technical evaluation demonstrates that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(b) If Section 1104.12(a) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Sections 1104.10 - .12 PROVISIONS FOR FLOOD HAZARD REDUCTION.

1104.99 PENALTY

Whoever violates any regulation or any provision of this Flood Damage Prevention Ordinance or any amendment or supplement thereto shall be fined not more than one hundred dollars ($100.00). A separate offense may be deemed committed each day during or on which an illegal location, erection, construction, reconstruction, enlargement, change, maintenance or use occurs or continues.

APPENDIX J

SAMPLE PLANNED UNIT DEVELOPMENT REGULATIONS

1700.00 PLANNED UNIT DEVELOPMENT REGULATIONS

Sections 1700.00 to 1700.50 inclusive of this Ordinance (Resolution) shall apply to the location and maintenance of Planned Unit Developments as herein defined.

1700.10 Purpose

It is the response of these Sections to promote the public health, safety, and welfare by providing for the regulation of planned unit developments. It is the intent of these regulations to provide maximum opportunity for orderly large-scale developments which benefit the community as a whole by offering a greater choice of lining environments, a wider range of development plans featuring more complementary blending of land uses, to include community facilities and open space, and a more unified approach with respect to the mixture of uses and their adaptation to topographical and geological features, recreational opportunities, and transportation needs.

1700.11 Definition

"Planned Unit Development" or PUD shall mean an area of land in which a variety of housing types and subordinate commercial and industrial facilities are accommodated in a pre-planned environment under more flexible standards, such as lot sizes and setbacks, than those restrictions that would normally apply under these regulations. The procedure for approval of such development contains requirements in addition to those of the standard subdivision, such as building design principles, and landscaping plans.

1700.12 Interpretation

Whenever the requirements of Sections 1700.00 to 1700.50 appear to be in conflict with other Sections of this Ordinance (Resolution) or with those of other existing codes (resolutions), the provisions of these Sections shall prevail.

1700.20 PUD District Designation

Subsequent to the approval of the Planning Commission (Zoning Commission) and the City Council (Village Council, Township Trustees, County Commissioners), the designation "Planned Unit Development District" may be applied to any residential district (or specify other district[s]). Upon approval of the final development plan, the Official Zoning Map shall be so annotated for the land area affected, and the district name shall be appropriately amended.

1700.21 Uses Permitted in a PUD District

Residential, commercial, manufacturing, public, and quasi-basic uses may be combined in PUD districts, provided that the proposed location of the commercial or manufacturing uses will not adversely impact upon adjacent property or the public health, safety, and general welfare, and that the location of such uses are specified in the final development plan. Lot area and other yard requirements of the residential district shall apply except as modified in Sections 1700.25.

The amount of land devoted to commercial and/or manufacturing use in a residential-commercial-manufacturing or residential-commercial development shall be determined by the Commission and approved by City Council (Village Council, Township Trustees, County Commissioners).

1700.22 Minimum Project Area Requirements

The gross area of a tract of land proposed to be developed in a planned unit development district shall be a minimum of twenty (20) acres, provided, however, that smaller parcels may be considered on the basis of their potential to satisfy the intent of these regulations. In any case wherein the planned unit development proposed contains a mixture of residential uses with commercial and/or manufacturing uses, the Commission may limit the development of not more than fifteen (15) percent of the tract to commercial and/or manufacturing uses.

A minimum of twenty (20) percent of the land developed in any planned unit development project shall be reserved for common open space and recreational facilities for the residents or users of the area being development. The open space shall be disposed of as required in Section 1700.23 of this Ordinance (Resolution).

1700.23 Disposition of Open Space

The required amount of common space land reserved under a planned unit development shall either be held in corporate ownership by owners of the project area, for the use of each owner who buys property within the development, or be dedicated to a homeowners' association who shall have title to the land which shall be retained as common open space for parks, recreation, and related uses. The legal articles relating the organization of the homeowners association is subject to review and approval by the Planning (Zoning) Commission and shall provide adequate provisions for the perpetual care and maintenance of all common areas. Public utility and similar easements and right-of-ways for water courses and other similar channels are not acceptable for common open space dedication unless such land or right-of-way is usable as a trail or similar purpose and has been approved by the Commission. The responsibility for the maintenance of all open spaces shall be specified by the developer before approval of the final development plan.

1700.24 Utility Requirements

Underground utilities, including telephone, cable television, and electrical systems, are required within the limits of all planned unit developments. Appurtenances to these systems which can be effectively screened may be exempted from this requirement if the Commission finds that such exemption will not violate the intent or character of the proposed planned unit development

1700.25 Special PUD Lot Requirements

The lot requirements for planned unit development approved by the Commission may vary from requirements previously prevailing for the district as follows:

1. Lot width and setback and yard requirements may be varied to accommodate a variety of structural patterns, clustering designs, and housing types.

2. Lot area per dwelling unit requirements may be reduced by not more than twenty (20) percent.

3. To provide for the availability of lower and moderately priced rental and sale residences within planned unit developments, the Commission may permit the following:

    a. A PUD development plan proposing the inclusion of at least twelve (12) percent lower or moderately priced rental or sale dwelling units may entail no minimum lot or yard requirements, provided that the total area of the residential developments equal to ninety (90) percent of the total minimum lot requirement for such residential development in the district, and that buffering and screening devices are sufficient.
    b. A PUD development plan proposing the inclusion of at least ten (10) percent lower or moderately priced rental or sale dwelling units may entail a dwelling unit density ten (10) percent in excess of the density requirement for the district.
    c. Each property development in the planned unit development should abut common open space or similar areas, provided, however, that any residential property not abutting such uses shall have well designed access to, and shall be no more than 500 feet from, such uses.

1700.26 Arrangement of Commercial Uses

When planned unit development districts include commercial and/or manufacturing uses, commercial buildings and establishments shall be planned as groups having common parking areas and common ingress and egress points in order to reduce the number of potential accident locations at intersections with streets. Planting screens or fences shall be provided on the perimeter of the commercial and/or manufacturing areas abutting residential areas. The plan of the project

shall provide for the integrated and harmonious design of buildings, and for adequate and properly arranged facilities for internal traffic circulation, landscaping, and such other features and facilities as may be necessary to make the project attractive and efficient from the standpoint of the adjoining and surrounding non-commercial areas.

All areas designed for future expansion or not intended for immediate improvement or development shall be landscaped or otherwise maintained in a neat and orderly manner as specified by the Commission.

1700.30 Procedure for Approval of Planned Unit Development Districts

Planned unit development districts shall be approved in accordance with the procedure in Sections 1700.30 to 1700.48. It is the intent of these sections to incorporate the review and approval of development plans with the amendment process to remove the necessity, in many instances, to proceed under Article 6 prior to the commencement of the planned unit development plan review and approval process.

1700.31 Pre-Application Meeting

The developer shall meet the Zoning Administrator and Planning (Zoning) Commission prior to the submission of the preliminary development plan. The purpose of this meeting is to discuss early and informally the purpose and effect of this Ordinance (Resolution) and the criteria and standards contained herein, and to familiarize the developer with zoning and other applicable regulations.

1700.32 Preliminary Development Plan Application Requirements

An application for preliminary planned unit development approval shall be filed with the Zoning Administrator by at least one owner of property for which the planned unit development is proposed. At a minimum, the application shall contain the following information filed in triplicate:

1. Name, address, and phone number of applicant;
2. Name, address, and phone number of registered surveyor, registered engineer and/or urban planner assisting in the preparation of the preliminary development plan;
3. Legal description of property;
4. Present use[s];
5. Present and proposed zoning district;
6. Proposed amending Ordinance (Resolution);
7. A vicinity map at a scale approved by the Zoning Administrator showing the property lines, streets, existing and the proposed zoning, and such other items as the Zoning Administrator may require;

8. A preliminary development plan at a scale approved by the Zoning Administrator showing topography at ten (10) foot intervals; location and type of residential, commercial, and industrial land uses; layout, dimensions, and names of existing and proposed streets; right-of-ways, utility easements, parks and community spaces; layout and dimensions of lots and building setback lines; preliminary improvement drawings showing water, sewer, drainage, electricity, telephone, and natural gas; and such other characteristics as the Commission may deem necessary;
9. Proposed schedule for the development of the site;
10. Evidence that the applicant has sufficient control over the land in questions to initiate the proposed development plan within two years.
11. A fee as established by Ordinance (Resolution);
12. A list containing the names and mailing addresses of all owners of property within 500 feet of the property in question;
13. Verification by at least one owner of property that all information in the application is true and correct to the best of his knowledge.

The application for preliminary planned unit development shall be accompanied by a written statement by the developer setting forth the reasons why, in his opinion, the planned unit development would be in the public interest and would be consistent with the stated intent of these planned unit developments requirements.

1700.33 Planning (Zoning) Commission Public Hearing

The Planning (Zoning) Commission shall schedule a public hearing on the application for approval of the preliminary development plan not less than twenty (20) or more than forty (40) days from the date of filing such an application.

1700.34 Notice of Public Hearing

Before holding the public hearing, notice of such Commission hearing shall be given in one or more newspapers of general circulation at least fifteen (15) days before the date of said hearing. The notice shall set forth the time and place of the public hearing, a general description of the planned unit development, and a statement that, after the public hearing and submission of a final development plan, the matter will be referred to the City Council (Village Council, Township Trustees, County Commissioners) for further determination.

Also before holding the public hearing, written notice of such hearing shall be sent by the Planning (Zoning) Commission by first class mail, at least twenty (20) days before the hearing, to all owners of property within 500 feet of the property in question and to such others as the Commission determines should receive notice. Notices to individual property owners shall contain the same information as required of notices published in the newspaper.

1700.35 Public Access to Proposed PUD Documents

For a period of at least twenty (20) days prior to the public hearing by the Commission, all papers relating to the planned unit development shall be available for public inspection in the office of the Zoning Administrator.

1700.36 Approval In Principle Of Preliminary Development Plan

Within sixty (60) days after the public hearing, the Commission shall review the preliminary development plan to determine if it is consistent with the intent of this Ordinance (Resolution); whether the proposed development advances the general welfare of the community and neighborhood; and whether the benefits, combination of various land uses, and the interrelationship with the land uses in the surrounding area justify the deviation from standard district regulations. The Commission's approval in principle of the preliminary development plan shall be necessary before an applicant may submit a final development plan. Approval in principle shall not be construed to endorse a precise location of uses, configuration of parcels, or engineering feasibility.

1700.40 Submission Of Final Development Plan

After approval in principle of the preliminary development plan, the developer shall submit a final development plan to the Zoning Administrator. The final development plan shall be in general conformance with the preliminary development plan approved in principle. For the purposes of this Ordinance (Resolution), the submission of the final development plan is a formal request for rezoning of the property in question. Five (5) copies of the final development plan shall be submitted and may be endorsed by a qualified professional team which should include an urban planner, licensed architect, registered land surveyor, registered civil engineer, and registered landscape architect or landscape horticulturist.

1700.41 Final Development Plan Application Contents

An application for approval of the final development plan shall be filed with the Zoning Administrator by at least one owner of property for which the planned unit development is proposed. Each application shall be signed by the owner, attesting to the truth and exactness of all information supplied on the application for the final development plan. Each application shall clearly state that the approval shall expire and may be revoked if construction on the project has not begun within two (2) years from the date of issuance of the approval. At a minimum, the application shall contain the following information:

1. A survey of the proposed development site, showing the dimensions and bearings of the property lines; area in acres; topography; and existing features of the development site, including major wooded areas, structures, streets, easements, utility lines, and land uses.

2. All the information required on the preliminary development plan; the location and sizes of lots; location and proposed density of dwelling units; non-residential building intensity; and land uses considered suitable for adjacent properties.
3. A schedule for the development of units to be constructed in progression, and a description of the design principles for buildings and streetscapes; a tabulation of the number of acres in the proposed project for various uses, the number of housing units proposed by type; estimated residential population by type of housing; estimated non-residential population by type of housing; estimated non-residential population; anticipated construction timing for each unit; and standards for height, open space, building density, parking areas, population density, and public improvements, whenever the applicant proposes any exception from standard zoning districts requirements or other Ordinances (Resolutions) governing development.
4. Engineering feasibility studies and plans showing, as necessary, water, sewer, drainage, electricity, telephone, and natural gas installations; waste disposal facilities; street improvements; and the nature and extent of earth work required for site preparation and development.
5. Site plan, showing building(s), various functional use areas, circulation, and their relationship.
6. Preliminary building plans.
7. Landscaping plans.
8. Deed restrictions, protective convenants, and other legal statements or devices to be used to control the use, development and maintenance of the land, and the improvements thereon, including those areas which are to be commonly owned and maintained.
9. A fee as established by Ordinance (Resolution).

1700.42 Public Hearing by Commission

Within thirty (30) days after submission of the final development plan, the Commission shall hold a public hearing. Notice and public inspection of the application shall be as specified in Sections 1700.34 and 1700.35 of this Ordinance (Resolution).

1700.43 Recommendation by Commission

Within sixty (60) days after receipt of the final development plan, the Commission shall recommend that the final development plan be approved as presented, approved with supplementary conditions, or disapproved, and shall transmit all papers constituting the record and the recommendations to City Council (Village Council, Township Trustees, County Commissioners).

1700.44 Criteria for Commission Recommendation

Before making its recommendation, the Commission shall find that the facts submitted with the application and presented at the public hearing establish that:

1. The proposed development can be initiated within two (2) years of the date of approval.

2. The streets proposed are suitable and adequate to carry anticipated traffic, and increased densities will not generate traffic in such amounts as to overload the street network outside the planned unit development.

3. Any proposed commercial or industrial development can be justified at the location proposed.

4. Any exception from standard district requirements is warranted by design and other amenities incorporated in the final development plan, in accordance with these planned unit development requirements and the need to provide a variety of housing opportunities with regard to type and price.

5. The area surrounding said development can be planned and zoned in coordination and substantial compatibility with the proposed development.

6. The existing and proposed utility services are adequate for the population densities and non-residential uses proposed.

1700.45 Public Hearing by City Council (Village Council, Trustees, Commissioners)

After receiving the recommendation from the Planning (Zoning) Commission, the Council (Trustees, County Commissioners) shall hold a public hearing on the PUD final development plan within a reasonable time.

1700.46 Notice of Public Hearing by Council (Trustees, Commissioners)

Before holding its public hearing, notice of such hearing shall be given by at least one publication in one or more newspapers of general circulation at least thirty (30) days before the hearing. The notice shall set forth the time and place of the public hearing, the nature and a general description and summary of the planned unit development, and a statement that all papers relating to the planned unit development are on file with the Clerk and open for public inspection.

Also, written notice of the hearing on the planned unit development shall be mailed by the Clerk by first class mail, at least twenty (20) days before the date of the public hearing, to all owners of property within 500 feet of the proposed planned unit development and to such others as may be determined should receive such notice. Notices to individual property owners should contain the same information as required of notices published in the newspaper.

1700.47 Action by Council (Trustees, Commissioners)

After the public hearing, the Council (Trustees, County Commissioners) shall either approve, approve with supplementary conditions, or disapprove the application as submitted. If the application is approved as submitted or approved with conditions, the Council (Trustees, Commissioners) shall direct the Zoning Administrator to issue zoning permits in accordance with the approved plan and any conditions thereto attached. The final development plan shall further be considered as an integral part of the rezoning amendment, and no change from or substantive alteration in such planned unit development shall be permitted without repetition of the procedures in these Sections.

In the event that the Council (Trustees, Commissioners) deny or substantively modify the final development plan as recommended by the Commission, any resulting final development plan for said planned unit development shall not be effective unless passed or approved by three-fourths (3/4) of Council (unanimously by the Trustees, Commissioners).

1700.48 Supplementary Conditions and Safeguards

In approving any planned unit development application, both the Planning (Zoning) Commission and the Council (Trustees, Commissioners) may prescribe appropriate conditions and safeguards in conformity with this Ordinance (Resolution). Any violation of such conditions or safeguards, which have been made a part of the terms under which the final development plan has been approved, shall constitute a violation of this Ordinance (Resolution) and be punishable as such.

1700.50 Expiration and Extension of Approval Period

The approval of a final development plan for a planned unit development district shall be for a period not to exceed five (5) years to allow for preparation and recording of the required subdivision plat and development of the project. If no construction has begun within two (2) years after approval is granted, the approved final development plan shall be void, and the land shall revert to the district regulations of the district in which it is located. An extension of the time limit or modification of the approved final development plan may be approved if the Board of Zoning Appeals finds that such extension is not in conflict with the public interest. No zoning amendment passed during the time period granted for the final approved final development plan shall in any way affect the terms under which approval of the planned unit development was granted.

APPENDIX K

SAMPLE HISTORICAL OVERLAY DISTRICT REGULATIONS

1153.01 Purpose

Council hereby declares as a matter of public policy that the preservation, protection, and use of areas, places, buildings, structures and works of art in nationally registered historic districts is a public necessity and is required in the interest of the health, safety and welfare of the people. The purpose of this chapter is to:

(a) Safeguard the heritage of the City by preserving sites and structures within nationally registered historic districts which reflect the City's history and its architectural past.

(b) Stabilize and improve property values.

(c) Strengthen the economy of the City.

(d) Protect and enhance the City's attractions to residents, tourists and visitors.

(e) Enhance the visual and aesthetic character, diversity and interest of the past.

(f) Foster civic pride in the beauty and notable accomplishments of the past.

(g) Promote the use and preservation of historic sites and structures for the education and general welfare of the people of the City.

(h) Preserve sound existing housing stock and safeguard the residential character of primarily residential neighborhoods.

1153.02 Definitions

For the purpose of this chapter, certain terms and words are herewith defined as follows:

(a) "A.I.A." means the American Institute of Architects, Toledo Chapter.

(b) "A.S.I.A." means the American Society of Landscape Architects, Maumee Valley Section.

(c) "Alter" or "alteration" means any change requiring a building permit involving the exterior architectural features, including significant landscaping, of any property which lies within an historic district, not including demolition, removal or new construction.

(d) "Applicant" means any person, persons, association, organization, partnership, units of government, public bodies and corporations who applies for a Certificate of Appropriateness in order to undertake an environmental change within an historic district.

(e) "Arts Commission" means the Arts Commission of Greater Toledo.

(f) "Certificate of Appropriateness" means a certificate authorizing any environmental change within an historic district.

(g) "Council" means the Council of the City of Toledo.

(h) "Delegates-at-large" means residents of Toledo appointed to the historic district commissions who represent educational, civic, governmental, professional and historic preservation organizations.

(i) "Demolition" means the complete or substantial removal or destruction of any structure which is located within an historic district.

(j) "Environmental Change" means any exterior alteration, demolition, removal or new construction of any property requiring a building permit subject to the provisions of this chapter.

(k) "Exterior architectural feature" means the architectural style, general design and arrangement of the exterior of a structure including, but not limited to, the type, color and texture of the building material, doors, windows, roof, porches and other appurtenant fixtures.

(l) "Historic district" means any district that is listed on the National Register of Historic Places and which has been locally designated by Council to be regulated by this chapter.

(m) "Historic district commissions" means appointed boards established to review environmental changes within historic districts, having specific powers and duties subject to the provisions of this chapter.

(n) "Landmarks Committee" means the Landmarks Committee of the Maumee Valley Historical Society.

(o) "Mothballing" means the process of protecting a vacant historically and/or architecturally significant building from further deterioration and/or vandalism by:

(1) Patching the roof of the building to protect the building from inclement weather, and/or

(2) Securely boarding up the doors, windows and any or all other openings of the building.

(p) "Neighborhood delegates" means residents of the City who reside in or own property within designated historic districts.

(q) "Plan Commission" means the City Plan Commission.

(r) "Plan Director" means the Executive Director of the Toledo Lucas County Plan Commissions.

(s) "Preservation" means the process, including maintenance, of treating an existing building to arrest or slow future deterioration, stabilize the structure and provide structural safety without changing or adversely affecting the character or appearance of the structure.

(t) "Property owner" means the owner(s) of record.

(u) "Rehabilitation" or "renovation" means the modification or change to an existing building. Rehabilitation extends the useful life or utility of the building through repairs or alterations, sometimes major, while the features of the building that contributed to its architectural, cultural, or historical character are preserved and/or restored.

(v) "Standards and guidelines" means the building construction and building rehabilitation criteria derived from historical and architectural information reflecting that particular historic district to be used by the historic district commission in considering Certificate of Appropriateness applications.

(w) "Structure" means any building including houses, stores, warehouses, churches, schools, garages, barns, carriage houses, tool sheds, or similar buildings, and also fences, walls, light fixtures, steps, signs, works of art, or other like fixtures or any appurtenances thereto, or any significant landscaping.

1153.03 Proposals to designate and/or expand historic districts.

(a) Initiation.

(1) Proposals to designate or expand historic districts shall be initiated by resolution of Council, with referral to the Plan Commission for study and recommendation.

(2) Proposals to designate or expand historic districts shall include the following documentation:

(A) Certification that the district is listed on the National Register of Historic Places;

(B) A boundary description;

(C) A description of the architectural and historical significance.

(b) Study and hearing.

(1) General procedures to designate and/or to expand designated historic districts shall be in accordance with the required procedures for zone charges as provided in Section 1111.01.

(2) Plan Commission Report. The Plan Commission Report to Council shall include information as to how the proposed historic district or expansion is of special historical and architectural significance. The Plan Commission Report shall include the following.

(A) Whether the district proposed to be designated is listed on the National Register of Historic Places;

(B) Whether the district proposed to be designated provides significant examples of architectural styles of the past;

(C) A description of the district to serve as an informational resource. The description shall include, but need not be limited to, the following:

1. A geographic description including location and its relationship to the entire City;

2. A description of the general land uses;

3. A general description of the building conditions;

4. A general description of the socio-economic characteristics;

5. A description of existing developmental plans or programs within or including the historic district;

6. A list of neighborhood organizations within or serving the historic district.

(c) Council designation.

(1) Council hearing. Council shall hold public hearings on proposals to designate or expand historic districts. These hearings shall be in the same manner as for any proposed change in the zoning map.

(2) Zoning map overlay. The Plan Director shall cause the designation to be shown upon the official zoning maps as an overlay without changing the underlying zoning. Whenever there is a conflict between regulation of the zoning district and the regulations of the historic districts, the more restrictive shall apply.

(3) Notification of designation. Upon designation, the Clerk of Council shall promptly notify the Commissioner of Inspection and Rehabilitation Division, the Plan Director and the City Law Director. The Law Director shall cause the designation to be recorded by the Lucas County Recorder. The Plan Director shall notify all interested or affected property owners, groups, City departments, boards and commissions.

1153.04 Correlation of City programs; land use review.

(a) The City shall consider its Capital Improvements Program, land purchases, and other plans in or proximate to an historic district, with respect to the purpose and requirements of this chapter and shall, whenever feasible, support it and conform thereto.

(b) The Plan Commission shall notify the historic district commissions of any activity requiring Plan Commission review which is in the respective historic district or 500 feet from its boundary. Notification shall be given to the respective historic district commission at least ten calendar days before the Plan Commission hearing.

1153.05 Historic district commissions.

(a) Establishment. Each historic district shall have a commission appointed by the Mayor with the consent of Council. The purpose of these commissions will be to administer the delegated functions as set forth in this chapter. Each historic district commission shall consist of no fewer than nine members. The historic district commission members shall be composed of the two following categories: neighborhood delegates and delegates-at-large. The neighborhood delegates shall exceed the delegates-at-large by one member.

(1) Delegates-at-large. Each historic district commission shall include, but is not limited to, representation from the following organizations:

A. The American Institute of Architects (Toledo Chapter);

B. The Arts Commission of Greater Toledo;

C. The Landmarks Committee of the Maumee Valley Historical Society;

D. The City Plan Commission: the Plan Director or his staff designee.

The delegates-at-large shall be appointed by the Mayor with the consent of Council from nominations submitted by the respective organizations. The delegates-at-large may be residents of the historic district to which they have been appointed to serve as historic district commission members.

(2) Neighborhood delegates. Neighborhood delegates shall be appointed by the Mayor with the consent of Council from nominations made by, but not limited to, interested historic district residents and neighborhood organizations. Of the neighborhood delegates, a majority shall be residents of that particular historic district.

(3) Historic district commission members. All historic district commission members shall be residents of Toledo, serve without compensation and may be removed for cause by Council. In the event that the organizations designated in subsection (a)(1) hereof do not submit nominations within forty days after a request is made, the Mayor may appoint, on his own nomination, with the approval of Council, members of such organization or profession pursuant to the requirements of this section.

(4) Conflict of interest regarding historic district commission members. To avoid conflicts of interest, commission members shall not vote on cases in which they have economic interests.

(5) Terms of membership. Initial appointments shall be for staggered terms, as specified by the particular historic district commission, of one, two or three years. All subsequent terms shall be for a period of three years. Vacancies shall be filled for the unexpired term in the same manner as original appointments are made.

(b) Organization. Each historic district commission shall annually select one of its members to serve as chairperson and one as vice chairperson. The Plan Director shall provide such staff assistance as is necessary and available. All City department and agencies shall cooperate in expediting the work of the historic district commissions.

Each historic district commission shall adopt rules and regulations consistent with this chapter governing its procedures and transactions. Each historic district commission shall meet as required to carry out the review of applications for Certificates of Appropriateness, and such other related work as may be accepted through request of the Plan Commission or Council or undertaken on its own motion. Meetings shall be held at least once each month when there are applications to be considered and not less than once every three months. Special meetings may be held at the call of the chairperson of each historic district commission.

(c) Powers and duties. Within 120 days after appointment and subject to Council approval, the historic district commission shall develop appropriate standards and guidelines reflecting the district's historic and architectural significance. The standards and guidelines shall promote redevelopment of historic structures and compatible new development within the district. The standards and guidelines shall not limit new construction within a district to any one historical period or architectural style, but shall seek to preserve the integrity of existing historic structures.

The standards and guidelines shall include, but not be limited to, the following exterior architectural and design considerations:

(1) Structural proportion;

(2) Foundations of structures;

(3) Exterior walls;

(4) Building height;

(5) Building width;

(6) Roof type;

(7) Building material;

(8) Exterior architectural features;

(9) Paving or walkways;

(10) Significant landscaping fixtures;

(11) Color or colors of the exterior as related to color or colors of surrounding buildings.

Each historic district commission shall be empowered to hear, review, grant, deny and recommend modifications to proposals for Certificates of Appropriateness involving environmental changes within the district. Applications for Certificates of Appropriateness shall be judged using adopted historic district standards and guidelines.

A. Each historic district commission shall establish, within the spirit and purposes of this chapter, procedures for evaluating applications for Certificates of Appropriateness. Such information shall be written and published within three months after the historic district commission members have been appointed and may be revised from time to time.

B. Each historic district commission shall maintain files, available to the public, containing all applications granted or denied to serve as a basis for prospective applicants to conform their plans with established policy.

C. Each historic district commission may make recommendations to the Plan Commission regarding amendments to this chapter and with respect to other legislation affecting the historic districts.

D. Each historic district commission shall work for the continuing education of both the historic district residents which it serves and the residents of the City with respect to this chapter and the district's historic heritage and architectural significance. In addition, each historic district shall publish informational literature and hold periodic public meetings to disseminate information on preservation and rehabilitation techniques and resources.

E. The historic district commissions may delegate to the Plan Director review authority over certain building permit items. Decisions shall be based on historically and architecturally documented criteria adopted by the historic district commission.

The Plan Director shall then review, grant, deny and/or recommend modifications in writing to such applications.

1153.06 Applications for a Certificate of Appropriateness.

(a) No environmental changes shall be made to any property within an historic district unless a Certificate of Appropriateness has been previously issued by the historic district commission.

(b) Building permit applications to the Division of Inspection for environmental changes within designated historic districts shall be deemed as applications for Certificates of Appropriateness, and copies of such shall be forwarded to the Plan Director together with copies of all applicable plans, designs, elevations, specifications and documents relating thereto, within seven days after receipt thereof.

(c) Upon receipt of all pertinent documents, the Plan Director:

(1) Shall inform the applicant of the review procedures and application requirements.

(2) Shall have the authority to request from the applicant additional pertinent information regarding the proposed environmental change;

(3) Shall inform applicants having applications requiring historic district commission review of the date on which the application will be heard;

(4) Shall inform the respective historic district commission members of the Certificate of Appropriateness applications.

1153.07 Initial hearing procedures.

(a) A public hearing on an application for a Certificate of Appropriateness shall be conducted at the next regularly scheduled historic district commission meeting, no later than forty-five days after the filing of the application. The historic district commission chairperson may call special meetings with the applicant for consultation at his own discretion or at the request of the Commissioner of the Division of Inspection prior to the regularly scheduled historic district commission meeting.

(b) The historic district commission shall provide notice of a pending hearing to any interested citizen who has filed with the historic district commission a formal request for such notice. Notice shall also be issued to the owners of property abutting and across a public right of way from the affected property. Other owners, residents, and neighborhood organizations shall be notified as determined by the historic district commission to carry out the intent of this chapter.

(c) At the historic district commission's discretion, a maximum of one deferral not to exceed forty-five days beyond the originally scheduled hearing date may be granted.

(d) The chairperson shall conduct meetings of the historic district commission and a record of minutes shall be kept and maintained for at least six years. All meetings shall be open to the public and the minutes of meetings shall be a public record.

(e) The applicant and all interested parties either supporting or opposing such issuance shall be permitted to present information and arguments.

(f) The majority of the historic district commission members shall constitute a quorum. For the taking of official action, a majority vote of the quorum shall be required.

(g) In ruling upon an application for a Certificate of Appropriateness, the historic district commission shall consider the following:

(1) The adherence of the environmental change to the district's adopted standards and guidelines;

(2) The effect of the historic district commission's decision upon the applicant.

(h) At the hearing, the historic district commission shall issue an oral decision followed by a written decision within seven days after the date of the hearing, setting forth, with specificity, its findings and analysis. In the event that no action is taken within forty-five days, the Certificate of Appropriateness shall be issued as a matter of law.

(i) Unless the work described in the Certificate of Appropriateness is commenced within one year and continued progress is made and is completed within two years, the Certificate of Appropriateness shall expire as a matter of law. The respective historic district commission may grant an extension of time for good cause shown.

1153.08 Demolition hearing procedures.

(a) In cases where an applicant applies for a Certificate of Appropriateness to demolish a structure within a designated historic district, the respective historic district commission shall grant the demolition and issue a Certificate of Appropriateness when one or both of the following conditions prevail:

(1) That the structure contains no features of architectural and historic significance;

(2) That there exists no reasonable economic use for the structure as it exists or as it might be restored, and that there exists no feasible and prudent alternative to demolition, or that deterioration

has progressed to the point where it is not economically feasible to restore the structure.

(b) If the commission disapproves a Certificate of Appropriateness application involving a demolition or removal of an historically and architecturally significant structure within an historic district, the commission shall have the power to impose a waiting period not to exceed one year. During such period, the historic district commission and the applicant shall make every reasonable effort to find a demolition alternative for that structure. During the waiting period the owner of such structure shall maintain or mothball the structure to prevent further deterioration. If the commission and the applicant do not agree on a means of preserving the structure within the specified waiting period, the Certificate of Appropriateness shall be issued as a matter of law. The owner of the property shall then be subject to all regulations governing new construction within the historic district.

1153.09 Appeals.

(a) Decisions by the Plan Director may be appealed by an interested party to the historic district commission. Notice of appeal shall be made within seven days of the decision. The appeal shall be heard at the next regularly scheduled meeting of the respective historic district commission.

(b) Decisions by the historic district commission may be appealed by any interested party to the Plan Commission within seven days of the historic district commission hearing.

(c) The Plan Commission shall consider an appeal within thirty days of receipt and shall utilize the written findings of that historic district commission to present historic, architectural and aesthetic features of such structure, the nature and character of the surrounding area, the use of such structure and its importance to the City. A majority vote of the Plan Commission shall be required to overturn a decision of the historic district commission.

(d) No building permit or other permit required for the activity applied for shall be issued during the seven day period or while an appeal is pending.

1153.10 Exclusions.

(a) Nothing in this chapter shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature of any property that does not involve a change in design, material or other appearance thereof covered by the historic district commission's standards and guidelines.

(b) Nothing in this chapter shall be construed to prevent the authorized Municipal officers from abating public nuisances as defined in Sections 1353.01 and 1353.02 of the Building Code.

Whenever the Commissioner of the Division of Inspection receives a public nuisance complaint involving structures within an historic district, he shall notify the Plan Director and the chairman of the respective historic district commission within two working days after receipt of such nuisance complaint.

1153.11 Conformance with existing laws.

This section shall not be construed to repeal the provisions of any existing laws and ordinances establishing housing, buildings and zoning requirements for the City generally or any other section of this chapter, except such as may directly conflict herewith.

1153.12 Old West End Historic District Commission.

(a) Members. To protect and enhance the historical and architectural characteristics of the Old West End Historic District, the Old West End Historic District Commission, consisting of nine members, is hereby established. Membership to the Commission shall be as follows:

(1) Delegates-at-large.

(A) American Institute of Architects, Toledo Chapter: one representative.

(B) Arts Commission of Greater Toledo: one representative.

(C) Landmarks Committee of the Maumee Valley Historical Society: one representative.

(D) City Plan Commission: The Plan Director or his designee.

(2) Neighborhood delegates. Five persons, of which at least four must reside in the Old West End Historic District. Persons shall be chosen from nominations made to the Mayor by Old West End Historic District residents and the Old West End Association.

(3) Terms. The initial terms of the following three members shall expire on the date of the first regular Council meeting following the first anniversary of their appointment:

A. The delegate from the AIA;

B. The delegate from the Arts Commission;

C. One neighborhood delegate.

The initial terms of the following three members shall expire on the date of the first regular Council meeting following the second anniversary of their appointment:

D. The delegate from the Landmarks Committee;

E. The delegates from the Plan Commission;

F. One neighborhood delegate.

The initial terms of the remaining three delegates shall expire on the date of the first regular Council meeting following the third anniversary of their appointment. Thereafter, the Old West End Historic District Commission members shall serve three-year terms.

(b) Old West End Historic District description and boundary. The Old West End Historic District lies approximately one-half mile northwest of the Central Business District and consists of twenty-five City blocks, approximately one and one-tenth miles north to south, and four-tenths of a mile east to west, and is approximately 330 acres.

The boundary description of the Old West End Historic District is as follows:

All the property located in the City of Toledo, Lucas County, Ohio, which is located within the following described boundaries:

Beginning at a point which is the intersection of the centerline of Glenwood Avenue and the centerline of Grove Place; thence northerly from the point of beginning along the centerline of Glenwood Avenue ... (etc.).

The Old West End Historic District shall be designated on the official zoning map and identified as OWEHD.

(c) The historic and architectural significance of the Old West End District. The Old West End is a predominantly late Victorian and Edwardian residential district. The district is mostly residential built almost entirely between 1875 and 1915, with houses including, but not limited to, the Second Empire, Queen Anne, Eastlake and Shingle styles, Richardsonian Romanesque, Chateauesque, Georgian Revival, Renaissance Revival and Neo-Classical Revival styles. It also includes apartment houses, the Toledo Museum of Art, whose original unit was completed in 1912, Mary Manse College, three churches and a hospital.

The development of the district began after the Civil War when prosperous merchants and later industrialists moved away from the downtown area near the Maumee River. The names of the owners such as Libbey, Ford, Willys, Blair and Secor have a great local, and in some cases, State and national significance. The unusual integrity of this early residential area makes it most imperative that it be preserved as a viable element in urban Toledo.

(d) Historic overlay districts standards and guidelines.

A. The following standards for rehabilitation are used by the Secretary of the Interior when determining if a rehabilitation project qualifies as "certified rehabilitation" pursuant to the Tax Reform Act of 1976 and the Revenue Act of 1978. These standards are

a section of the Secretary's "Standards for Historic Preservation Projects" and appear in Title 36 of the Code of Federal Regulations, Part 1208 (formerly 36 CFR Part 67). These "Standards for Rehabilitation" are adopted pursuant to Section 1153.05(c) and shall be complied with within the City.

1. Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration of the building, structure or site and its environment, or to use a property for its originally intended purpose.

2. The distinguishing original qualities or character of a building, structure or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.

4. Changes which may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

5. Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.

6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historical, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.

7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.

8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.

9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood or environment.

10. Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

(At this point, Toledo included "Guidelines for Applying the Secretary of the Interior's Standards for Rehabilitation," updated versions of which should be available from the Ohio Historical Society.)

APPENDIX L

LANGUAGE IN ZONING CODES

By Robert E. Manley [1]

AN IMPERFECT WORLD

Language is wonderful! Most especially, the English language is a wonderful tool for precise and varied expression. Until one is forced to use other languages, one does not fully appreciate the richness of the English language. There may be 50 ways to express any human concept in English, but Spanish may have only 5, and Portuguese perhaps 15.

Notwithstanding diverse ways in English to express almost any concept, constantly perverse misuse of the English language finds its way into section after section of zoning code after zoning code. There are two fundamental reasons that zoning codes fail to properly exploit the opportunities offered by English.

One, the overall decline in liberal arts education has resulted in graduation of professionals, be they lawyers or planners, who never have learned to read and write the English language like educated people. What is worse, they have not learned to think clearly. The notions of Aristotle's Rhetoric were long ago abandoned by English teachers in secondary schools and colleges. (Recently they are being rediscovered, but the impact of this rediscovery will not show its benefits for some years to come.) What is more, electronic media have conditioned a couple of generations of people to elliptical expressions, fast impressions and imprecise thinking.

The second fundamental reason for the misuse of language in zoning codes is that long ago the legal profession abdicated draftsmanship of zoning codes to the planning profession. If one reads opinions of judges, one might think that such lawyer neglect could hardly be a disaster, since judges seem to write their opinions in such unclear, fuzzy language. They seem to use 50 words where 5 would suffice, and consequently, 50 pages where 5 would suffice. Mr. Justice Holmes was noted for the clarity of his opinions. One reason is that they were brief and to the point. Indeed, it is reported that he would write them in longhand while standing. The conservation of human energy ensured that they were not longwinded. The creation of dictation equipment, word processing machinery and xerography have all cultivated imprecise redundancy in legal writing.

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With all of the deficiencies of lawyers in their writing, the fact is that lawyers tend to know what will distress the minds of judges and what will not distress the minds of judges. Notwithstanding the fact that planners are given excellent courses in planning law, these courses are not sufficient to substitute for three years of graduate level education to obtain a J.D. degree. Nor will they replace many years of interaction with the courts that experienced lawyers acquire through their practice.

There are reasons that the draftsmanship of zoning codes has been abdicated to planners. One reason is that many lawyers find it time-consuming and boring work. Lawyers who work for public agencies often have more exciting things to do, like prosecute criminals and handle bond issues for great public works. When faced with the task of writing a zoning regulation, they tend to put it aside for some day when they will have more time. That day unfortunately rarely arises, and in desperation they tell the planning director to write his own zoning code.

In the private practice, there are not many lawyers in the United States who have experience in writing zoning codes or who want to write zoning codes. The lawyers who are experienced in writing zoning codes are often not hired by units of local government because of budget restraints. The thought of hiring special counsel to draft a zoning regulation for $25,000 or $50,000 dollars irritates City officials who are having a hard time finding money to pay policemen. Thus, special counsel are often not hired. In addition, outside planning consultants tend to be more aggressive than law firms in soliciting the business of drafting regulations.

Perhaps the most important fundamental reason for the abdication to planners is that, until a few years ago, a law director could safely rest on his belief that, if the planning director were to make a mistake in drafting a zoning code, it would produce little or no financial harm to his unit of local government. When the planners took over the drafting of zoning laws the theory was that the law director would review them. Often these reviews were superficial, because of the belief that a mistake would cause no harm to the unit of local government. Recent decisions of various courts indicate that this sense of security is false.

In the early days of zoning there were skilled lawyers who were liberally educated men who drafted the early zoning laws. For example, the late Alfred Bettman was a very liberally educated and skilled lawyer. His approach to the drafting of zoning regulations was to ask that the planner write down clearly and concisely what result he wanted to produce. After he was able to induce the planner to state the result he wanted to produce, then Mr. Bettman would set about the task of drafting a law that would create that result. This constructive collaboration between planners and lawyers has long gone out of fashion for the reasons enumerated above.

Notwithstanding the presently sad state of affairs in regard to the draftsmanship of zoning regulations, and with the realization that the world will never be perfect, there are some basic notions about draftsmanship and language that are useful to whoever is drafting zoning regulations, the planner, lawyer, or subordinate technician.

PERILS OF ARTISTIC WORDS

Perhaps one of the most fundamental rules is to avoid artistic language. There is a general notion in the law that aesthetic judgments are too subjective to be enforceable by law. The law should not be concerned with what is beautiful, but with what relates to public health, safety and general welfare. Thus, while the draftsman may be thinking about aesthetic goals, he must always implement them by means of protecting the public health, safety and general welfare. A great deal can be done in this regard.[2]

The Cincinnati approach to environmental quality overlay zoning is an example of how some aesthetic considerations can be piggybacked on serious public safety concerns, such as landslides, and serious public welfare concerns, such as the waste of public investment. Historic preservation ordinances that are drafted in terms of preserving pretty buildings are more subject to being overturned than historic preservation ordinances that are written to promote the public welfare through preservation of the physical structures that reflect the history of our civilization so that future generations can understand their roots and thereby be better citizens as they carry on our civilization in the future.

Planners often have a strong background in design. Designers often use artistic words. Artistic words communicate to judges the concept of aesthetic regulation. Judges have consistently held that aesthetic regulation is too subjective to be amenable to legal enforcement. As a result, it is precarious to express artistic words in a zoning regulation. Every artistic word is a red flag in the eyes of a court.

PERILS OF EXPRESSIONS OF INTENT

A very common practice is for a zoning regulation to have at the beginning of each section or each chapter a new introductory paragraph which talks about the intent of the section. Yes, this is perilous, because courts believe that a law should do what it says, and a mere expression of the intent of what it would like to say creates confusion.

How can it create confusion? Specifically, the expression of intent may never actually be carried out by the body of the section. Some people believe that an expression of intent removes the need for the language of the body of the chapter to be precise. This is a perilous fallacy. For example, a section on historic preservation might very well state that the intent of the section is to promote the public health, safety and general welfare through the preservation of physical structures of great architectural and historic importance so that the physical evidence of the history of the city will be available for future generations so that they can understand the past and thereby better manage the future. This introductory sentence might be followed with all kinds of regulations, rules, criteria and lists that may never actually do what the expression of intent states. This problem could be easily cured by rewriting the section to say:

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[2] See for example "A Cincinnati Approach to Environmental Quality Overlay Zoning," 7 Urban Lawyer 96 (1975).

> The provisions of this chapter regulate the use of structures and locations that, according to the procedures set forth in this chapter, have been determined to be of great historical or architectural importance and which meet the criteria set forth in this chapter to require protection in order that they may be preserved to promote the public welfare so that future generations will have physical evidence of their history and thereby be better prepared to deal with the problems of the civic health and public welfare of the community in the future.

Another problem with a paragraph expressing intent is that it may be contradicted by the detailed rules and regulations in this section. This generates a lawsuit to determine whether or not the expression of intent is actually a portion of the ordinance or a mere commentary preamble to be read as though it were not a portion of the ordinance. [3]

The fundamental notion is that it is better to write the law in such a way that it does what the draftsman wants rather than to make a sloppy statement of intent with the hope that it will substitute for the clear expression of what the regulation is supposed to regulate.

PERILS OF CAPTIONS

Zoning codes frequently have attempted to use captions as a substitute for clear sentences. There is a legal question as to whether or not captions are even a part of the ordinance. For example, an ordinance that has a caption such as "SET-BACK CRITERIA" and then proceeds to list ten factors that planners recognize as being related to the appropriate set-back from a lot line may actually be held by the court to be meaningless. The reason for that is that, without a clear expository sentence at the beginning of the list of criteria that states the way in which the criteria are to be used, the mere list of criteria may be legally meaningless. A caption cannot substitute for a clear expository sentence. Indeed, the court may hold that the caption is treated as though it were not a part of a law, because it is merely a caption for convenience of reference. Most assuredly, the court cannot hold that a caption, if it is a part of a law, substitutes for a clear expository sentence. A zoning code cannot be written like a television script.

CRITERIALESS CRITERIA

A common error in the draftsmanship of a zoning ordinance is to create criteria that really are not criteria. For example, the power to approve a Planned Unit Development may be delegated to the planning commission or even to a hearing examiner. It is not unusual for an ordinance to say that a

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[3] This problem is illustrated in an analogous federal statute dealing with the state's obligation to provide care for developmentally disabled citizens. A skilled federal draftsman wrote a preamble which many people thought created substantive rights, but the Supreme Court said did not create substantive rights. See Pennhurst v. Halderman, 454 U.S. 808, 101 S.Ct. 1531 (1981).

Planned Unit Development shall be approved or disapproved based upon the following factors: "a) density; b) circulation; c) open space; d) terrain; e) hydrology; f) landscaping; g) external street patterns; h) internal traffic circulations; i) off-street parking; and j) recreational facilities." It may be that the planner who drafts such a section knows what he would decide in reviewing the foregoing list of factors. That is not sufficient. The ordinance must clearly state how each of these factors is to be evaluated. A mere list of factors does not constitute a list of criteria. There needs to be clear legislative guidance on how each of these factors will be evaluated. As the late Justice James Garfield Stewart wrote:

> Ordinarily, in delegating to boards and commissions the authority to make rules and regulations, the General Assembly must establish the legal policy by adopting standards and authorizing the boards and commissions to make their rules in accordance with such standards. In the picturesque language of Justice Cardozo in his dissenting opinion in Panama Refining Co. v. Ryan, 293 U.S. 388, 70 L.Ed. 466, 55 S.Ct. 241, the power conferred must not be "unconfined and vagrant" and must be "canalized within banks that keep it from overflowing".

To delegate discretion, without giving clear guidelines on how it is to be executed, constitutes an unlawful delegation of legislative power and nullifies the ordinance.

ADJECTIVES AND ADVERBS

The late Professor Austin W. Scott at the Harvard Law School was one of the great legal draftsmen of the century. His specialty was the law of trust which involves complex instruments that regulate the management of matters of great financial wealth over long periods of time. The way in which these documents are drafted can provide great well-being for the beneficiaries or great legal expense at trying to sort out their meaning.

Professor Scott repeatedly and consistently insisted that a lawyer, in drafting a legal document, never uses an adjective or an adverb. Every time an adjective or adverb is used it invites subjective judgment as to what it means; therefore, it invites a lawsuit. For example, a zoning regulation might require that parking lots be screened by mounds of earth planted with grass seed, by evergreen trees, by fences, walls or hedges composed of material or vegetation that obstructs the view of the parking lot. Once the screening requirement is made fuzzy with words like attractive, suitable, desirable or appropriate, the regulation becomes subjective, invites a lawsuit as to its meaning, and may produce a judicial determination that it is an unenforceable regulation because of the use of these adjectives.

EVIL CATCHALLS

A favorite mismanagement of the English language is to use the expression "shall include, but be not limited to...." For example, a provision might say that "materials that may be used to comply with the screening requirements of this ordinance shall include, but be not limited to, the following...," followed by a list of various items. Or a use regulation might say "the

following uses shall be permitted in the I zone: light manufacturing, automobile repairs, gas stations, automobile dealerships, and similar uses." These catchall phrases, designed to cover the things about which the draftsman has not thought, create two problems. First, what does the catchall phrase mean? Does it mean whatever subjectively the planning administrator thinks is a similar use or should have been included in the approved list? If it means this, then the courts are forced to conclude that it is a delegation of legislative power to the administrator without appropriate legislative guidelines. This would nullify the regulation.

To avoid that undesirable result, centuries ago the courts enunciated a canon of statutory construction which is "expressio unius est exclusio alterius." This roughly translates that to enumerate the particular excludes all else. As a practical matter, it means that the courts will interpret a list that enumerates particular things as though the catchall phrase put at the beginning or the end did not exist. This expungement of the catchall phrase saves the court from the unpleasant task of declaring the whole section invalid because the catchall language delegates legislative power without any statutory guidelines on how it should be exercised.

CONCLUSION: "THE PIT AND THE PENDULUM"

The best way to improve the quality of draftsmanship in zoning ordinances is to enhance the level of liberal arts education of the people who are doing the drafting. For some this means turning back the clock, an impossible task. For others it might be possible to rise to the challenge and read Aristotle's Rhetoric and Fowler's Modern English Usage. As long as planners are drafting zoning ordinances and lawyers are not rewriting them in a meticulous manner, they may or may not be English disasters, but without adequate lawyer input they will be legal disasters.

The best way to draft a zoning ordinance is to follow the Bettman formula. First, the planner should clearly state the result he wants to accomplish. Next, a liberally educated and experienced lawyer should draft the ordinance to produce that result. Third, the planner should review the language to make sure that the liberally educated and experienced lawyer has accomplished the assignment that was given to him.

We shall probably not get back to this method of drafting zoning ordinances, but unless we do, we shall never again see the quality of work that we saw in the Bettman days of zoning in Ohio.

Past, present, and future misuse of the English language condemn the treasuries of units of local government to a fate similar to that of the hero in Poe's "The Pit and the Pendulum." The treasury of every unit of local government is waiting to be ripped apart by the consequences of poor draftsmanship in zoning regulations. It may not happen, but also it may happen. The uncertainty is what is so horrible about Poe's story. The self-inflicted, needless uncertainty is what is so terrible about the misuse of the English language in zoning codes. As Poe wrote:

It might have been half an hour, perhaps even an hour (for I could take but imperfect note of time), before I again cast my eyes upward. What I saw confounded and amazed me. The sweep of the pendulum had increased in extent by nearly a yard. As a natural consequence, its velocity was also much greater. But what mainly disturbed me was the idea that it had perceptively descended.

LEGAL PITFALLS OF ZONING

By Harry M. Welsh[1]

It is accepted conventional wisdom, at least among the more cynical, that the legal system is a maze of technical rules artfully designed by the legal profession to avoid true justice or perhaps, on an even more sinister level, to enrich the principal participants -- i.e., the lawyers themselves. To be sure, the legal system is complex because the society that regulates it is complex. Nor is it always consistent or logical, and thus it is easy to understand why many laymen feel that, no matter how obvious the "correct" result in a given dispute should be, the opponent's lawyer will come up with some sort of a "loophole" which will result in a court decision contrary to what common sense dictates should occur.

In reality, the legal system in general, and as it applies to zoning in particular, is not designed nor operated as a trap for the unwary. Rather the statutes and court decisions interpreting them are intended to provide a rational framework to make land use decisions between very real competing interests -- the community, and the right of the landowner to use his land as he sees fit. The system is intended to operate uniformly, so that decisions in one case can be used with reasonable certainty to predict the outcome in other cases. There is also a system to review decisions through the courts, which under our system is the way that most disputes between citizens or a citizen and a local unit of government are resolved.

In short, the system is not intended to avoid a just result, but to produce one. However, unless consistent procedures are followed in the dispute resolution procedure, then we do not have a system, but a series of random decisions, truly a system of men and not of laws. Equal protection of the laws, a fair and impartial resolution of every dispute, can occur only if the same rules are applied in the same manner to all who participate in the system. Unfortunately, all too frequently court decisions do not reach the "substantive" problem, but are concerned with procedural issues. While this may be frustrating, as it seems to be avoiding the real issue, it is sometimes necessary so that the same procedures are applied in all cases. No attorney can change history, so if a procedural error was made during the process, the attorney's job is to protect his client's interest despite this mistake.

This may well result in prolonged and costly litigation which decides only procedural questions and not substantive ones. All too frequently the attorney is placed in the position of standing before a court and trying to rationalize what has occurred with the comment that "the subdivision made that decision" or "failed to follow that statute" because they operated without the "handicap" of counsel.

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What he is really trying to do is ask the court to ignore the procedural error and decide the case on its merits. The opposing attorney will likely be urging the court to decide in his client's favor because of the procedural error. When this attorney prevails, the cries of "loopholes" and "legal chicanery" fill the air above the losing camp. In reality, judges are not free to decide a case any way they wish. They have rules to follow and usually two layers of appellate review above them to reverse their decisions should they fail to do so. Thus, courts on occasion must resolve cases on procedural grounds not only because legal precedent requires it, but also to reinforce the integrity of the system.

The Courts are not and do not want to be "super boards of zoning appeals." The Supreme Court has stated with absolute sincerity that, where a local unit of government has made a decision with respect to a rezone, only if it is beyond fair debate that they erred will the courts intervene. So also with respect to quasi judicial decisions, such as variances, the courts defer to the expertise and the determination of disputed issues of fact made by the Board of Appeals, and, if the decision is supported by a preponderance of evidence, even though the court might have decided it differently if it had been the trier of facts, it will be sustained. No one can guarantee that you will be able to successfully defend every zoning decision you ever make, but what you can do is shift the odds significantly in your favor if you can avoid procedural errors in the administration of your system. Litigation over procedure benefits no one except, of course, the lawyers. Do it right, by the book the first time through, avoid procedural pitfalls, and let your decisions be reviewed on the merits. Don't give the challenger ammunition in the nature of procedural defects and then have to spend money to have your attorney try to "fix" in the courts what never should have been "broken".

Let me provide some specific examples. Zoning by definition involves dividing the territory of a political subdivision into zones or districts. The text of the ordinance or resolution recites what uses and often conditionally permitted uses are allowed in each district along with area setback and other limitations. However, there must be a method to determine where upon the earth's surface the various zones lie. The best approach is a metes and bounds description of each district or one using streets and roads, section numbers, and lot numbers, or even references to legal descriptions contained in deeds (e.g., 3.37 acre parcel as described in Deed Book 809, Page 312). While this can be complex to assemble accurately and may require assistance from a professional surveyor, it will settle with finality the question as to in which district a parcel of land lies. The far more common system is to rely upon a zoning map which shows by color or other designation the various zones. If you use a map, remember to tie it into the legislation by providing in both the ordinance or resolution and on the map appropriate language:

> This is the official zoning district map of _____ duly adopted on _____ and shall be deemed a part of this ordinance/resolution as if fully contained therein.

Have the map signed and dated by appropriate officials, just as the text of the ordinance or resolution is signed, and keep it available should a question arise as to the correct zoning district of any parcel.

When a rezone is approved, remember to amend the map and keep records to show each change was duly approved. The amending legislation should specifically direct the zoning inspector to change the official map. Without an up-to-date zoning map all the rules in the book are of no value, for there is no way to determine where the various districts lie. A carelessly drawn or amended zoning map is simply creating a "loophole" that in time may be used to the disadvantage of the subdivision or its residents whom the zoning was intended to protect.

The law is filled with time limits, times within which certain things must be done or may not be done. Unfortunately, some of these time limits are mandatory: that is, they are absolute and must always be followed. Others, however, are considered directory: you ought to follow them, but if you are a little late there are no adverse legal consequences. There is no test that can be articulated in a few lines that explains the difference. In the operation of your zoning, forget the concept of "directory" time limits. Treat all time limits as absolutely mandatory at all times and leave the concept of "directory" as a last resort for your lawyer to argue, should you fail to follow a time limit and there is no other way to justify your actions. If a legal notice must appear ten days before the hearing, don't publish it eight days before and hope no one will notice. If a hearing must be held within thirty days, hold it at 6:00 a.m., if need be, but get it done. Never rely upon the hope that the applicant or adjoining landowner won't notice or won't care. If you make a mistake, stop and start over. It is better to accept the modest embarrassment and expense of sending a second notice or republishing a legal ad than having to start over again two years later after an adverse court decision, or worse yet, losing in court and not being able to go back and correct the error. If litigation occurs, it may be possible that your attorney can avoid the consequences of the missed time limit, but don't bet on it. Save him the trouble and yourself both the money and the risk by always following time limits.

Just as sometimes it is impossible to see the forest because of all the trees that are in the way, we may forget the purpose of zoning. It is not intended to address financial or social interests of the community no matter how important. Its purpose is deciding the proper use of land. Of course, such issues are often closely related, but the law intends that you make all decisions based upon legitimate land use criteria. If the issue is whether property should be rezoned or whether a use variance should be granted, then consider only those factors which affect the overall plan of the community, the surrounding uses of land, and the suitability of the land for the proposed use. In recent years the Supreme Court has allowed aesthetic considerations as well as the effect upon traffic and the availability of municipal services as legitimate considerations in zoning decisions. Do not, however, attempt to make business decisions for people: e.g., "we don't need another video rental store in this community" may be correct in an economic sense, but is not relevant as a land use consideration.

Secondly, consider the use as opposed to the user: e.g., "he never finished the last project we approved for him." If the proposed use of the land is proper, then the character or the ability of the developer is irrelevant. Don't base decisions on personalities but upon uses. To do otherwise, "we'd rezone for anyone who is responsible" may well be creating the prospect of litigation far beyond the scope of a zoning dispute, such as defamation or a claim of civil rights violation. Thirdly, don't be swayed by the politics of the situation: e.g., "the neighbors don't want this change." While the latter is a very frequent basis of decisions and neighboring landowners' interests cannot be ignored, neighborhood opposition alone, as opposed to considering the reasons why the neighbors oppose it, cannot be your sole criterion. You must make decisions on their merits and not simply abdicate your responsibility and delegate your vote to the side with the most vocal support. You certainly can consider the neighbors' views, which is the purpose of a public hearing. However, your decision must be based on the law and the facts, and not decibel levels.

Finally, keep your legislation current. Many ordinances or resolution were initially drafted in the 1950's and 60's and do not reflect current needs. As an example, many contain extensive regulations of service stations. Today, however, traditional service stations are becoming rare, being replaced by convenience stores with gas pumps. Does your legislation address this issue? Video arcades, tanning salons, grand prix tracks, and survival game facilities have all appeared in recent years. While some legislation is worded broadly enough to allow appropriate control of these uses, some is not. Unless you keep current on land uses that are occurring in other areas, you may fall behind the times and be in a position that you can't control a proposed use because your legislation has become outdated and doesn't adequately cover it. Remember, once the application is filed, your legislation cannot be amended so as to affect that applicant.

Just as land uses change, so do legal principles. The use of aesthetic considerations in zoning decisions has been greatly expanded in the last few years, along with the right to require the removal of nonconforming signs under some conditions. In addition, the amendment procedure for township and county zoning has been extensively revised. Only by amending your resolution or ordinance can you take full advantage of these changes. Perhaps the time has come for you to suggest to your Planning or Zoning Commission that they should review your entire legislation to see that it still reflects the needs of your community. While a comprehensive amendment of your zoning legislation is time-consuming and tedious, an outdated ordinance or resolution that no longer reflects what your community needs, or fails to take advantage of changes in the law, may not provide maximum protection from inappropriate land uses. Your zoning ordinance or resolution, no matter how well drafted to begin with, is like maturing swiss cheese: holes are just going to appear in it from time alone. If you don't want these holes to become legal "loopholes", start now with an annual or at least biennial review of your legislation to see if any holes have developed or any new concepts have evolved that might make your legislation more effective.

CONCLUSION

Zoning is law, and like all law, unless it is voluntarily obeyed, it can be enforced only through the courts. Courts, however, must also follow the law, and, when a zoning resolution or ordinance was not enacted or amended properly, or does not adequately address an issue the court must decide, the judge may have no choice but to rule against the subdivision. Therefore, all who work in the field of zoning must learn the proper procedures which govern their positions and recognize that, unless those procedures are followed, their zoning will fail to do the job the community expects of it. You should not approach zoning with the fear that this is an alien science which cannot be understood, but rather with the realization that the procedural aspects with which you must frequently deal are something which you can master. By so doing you will greatly enhance the odds that, should litigation arise, your decision on the merits will be upheld by the courts. Adopt as the zoning philosophy of your subdivision a phrase recently coined in industry: "zero defects". Learn the procedural phases of the system, remember that land use decisions must be made on proper land use principles, and keep your legislation current. Then, should litigation occur, you can have your attorney concentrate his efforts on winning for you on the merits where winning really counts.

ZONING AND THE COMPREHENSIVE PLAN

By Stuart Meck [1]

When planners say that a zoning map amendment or a development proposal must be "in accordance with a comprehensive plan", what do they mean? To understand this, we must define the differences between the zoning map and the plan.

The Zoning Map

A zoning map depicts different use districts or zones for an entire community. By referring to the map and to the zoning ordinance text, you can find out to which uses property can be put, what kind of regulations will affect the conduct of that use, and what type of buildings or structures can be located on the property right now. A zoning map, along with the zoning ordinance text, is legislation, and can only be changed through legislative amendments.

The Comprehensive Plan

A comprehensive plan, on the other hand, is a local government's statement of goals, objectives and policies in text and maps to guide public and private development within its planning jurisdiction.

A comprehensive plan is prospective; it shows what the community should be like at some point in the future. While it represents a community's policy toward public and private development, it is not, like a zoning ordinance, a law.

The essential characteristics of a plan are that it is comprehensive, general and long range. "Comprehensive" means that the plan encompasses all geographical parts of the community and all functional elements -- typically land use, community facilities, transportation and housing -- which bear on physical development. "General" means that the plan summarizes policies and proposals and does not, in contrast with a zoning map, indicate specific locations or, in contrast with a zoning ordinance, provide detailed regulations. "Long range" means the plan looks beyond the foreground of pressing current issues to the perspective of problems and possibilities 10 to 20 years into the future.

While the contents of local plans will vary according to the needs and statutory authority of the local government, generally a comprehensive plan consists of a series of economic and demographic studies and contains four or more functional elements. The economic study inventories the amount, type, intensity and general location of commerce and industry, drawing on census information and other published data. It may also profile the local labor

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force. It usually examines the study area in the context of trends affecting the region in which the community is located. The demographic study includes analysis of population by age, education level, income, employment and other appropriate characteristics. Like the economic study, it includes an assessment of changes in the foreseeable future and the likely policy implications of those changes. There may also be an analysis of the natural physical environment dealing with geology, climate, soil associations, and ground and surface water.

Functional plan elements include:

1. **The land use element.** This contains a discussion of the amount, general location, and interrelationships of the different categories of public and private land use. This element also identifies factors influencing development -- those land uses, development constraints, or emerging land use patterns which may pose problems or offer opportunities in plan preparation. Objectives, policies and standards to guide the placement of land uses are stated. Finally, a map of proposed future land uses is provided.

Simple plans for small communities will group future land uses into commercial, industrial, residential and other categories. More complex plans may establish hierarchies of future land uses. For example, they may differentiate highway commercial districts from neighborhood shopping centers. Residential land uses may be shown in differing densities -- generally, three to four. Industrial land uses may be subdivided into light industrial districts, such as research facilities and warehouses, and heavy machinery production plants. There may be agricultural reserves, which demarcate prime agricultural land, and special resource protection areas such as wetlands and scenic rivers.

2. **The transportation element.** This consists of proposals for highway facilities and mass transit and related transportation improvements, such as bikeways. It includes analyses of existing and projected traffic volumes, and reviews the adequacy of the existing street system to handle future traffic patterns. A map, called the major thoroughfare plan, is provided which shows a future transportation network; on it, streets are classified by functional category (e.g., arterial, collector, local-serving). Suggested street standards are included; generally, they are later incorporated into the community's subdivision regulations. The thoroughfare plan is used, in part, for determining corridor locations and right-of-way requirements for new roads. The thoroughfare plan is an important source in the review of proposed subdivisions.

3. **Community facilities element.** This identifies those structures, areas or activities which provide basic public services to the residential and non-residential parts of the community. Included are schools, hospitals, libraries, police and fire stations, parks and playgrounds, cemeteries, and civic centers and other cultural facilities. General locations for new public facilities and sites of existing community facilities are also shown as part of the land use element. A community facilities element may also cover utilities, community services which are regularly distributed to or collected from properties through pipes or wires. This would include water and sewer lines, treatment plants and, where publicly owned, gas, electric and telephone lines.

4. **The housing element.** This element surveys the condition of the housing stock in the community and assesses the housing needs of persons residing or likely to reside in the community, particularly those of low and moderate income. This element may contain an assessment of all available local, state and federal resources that could be employed in meeting housing needs, an evaluation of existing building, housing and land development regulations which constrain housing production, and a rehabilitation/conservation strategy or program.

Plan Consistency

To find out whether a development proposal is in accord with a comprehensive plan, we must evaluate consistency. Consistency is sometimes defined as a relationship between the changes to zoning map or other development proposals (conditional use permit or planned unit development) and the comprehensive plan map which graphically summarizes all the proposals from the plan in terms of future land use, transportation, community facilities, and housing. Alternatively, consistency is defined as the relationship between the regulations and the plan's written policies.

Gauging a proposed project's consistency with a plan entails a two-step analysis:

(1) If a development proposal falls within one use or residential density category indicated on the comprehensive plan map, the local government (e.g. the city council or planning or zoning commission) must find the proposal consistent with the plan.

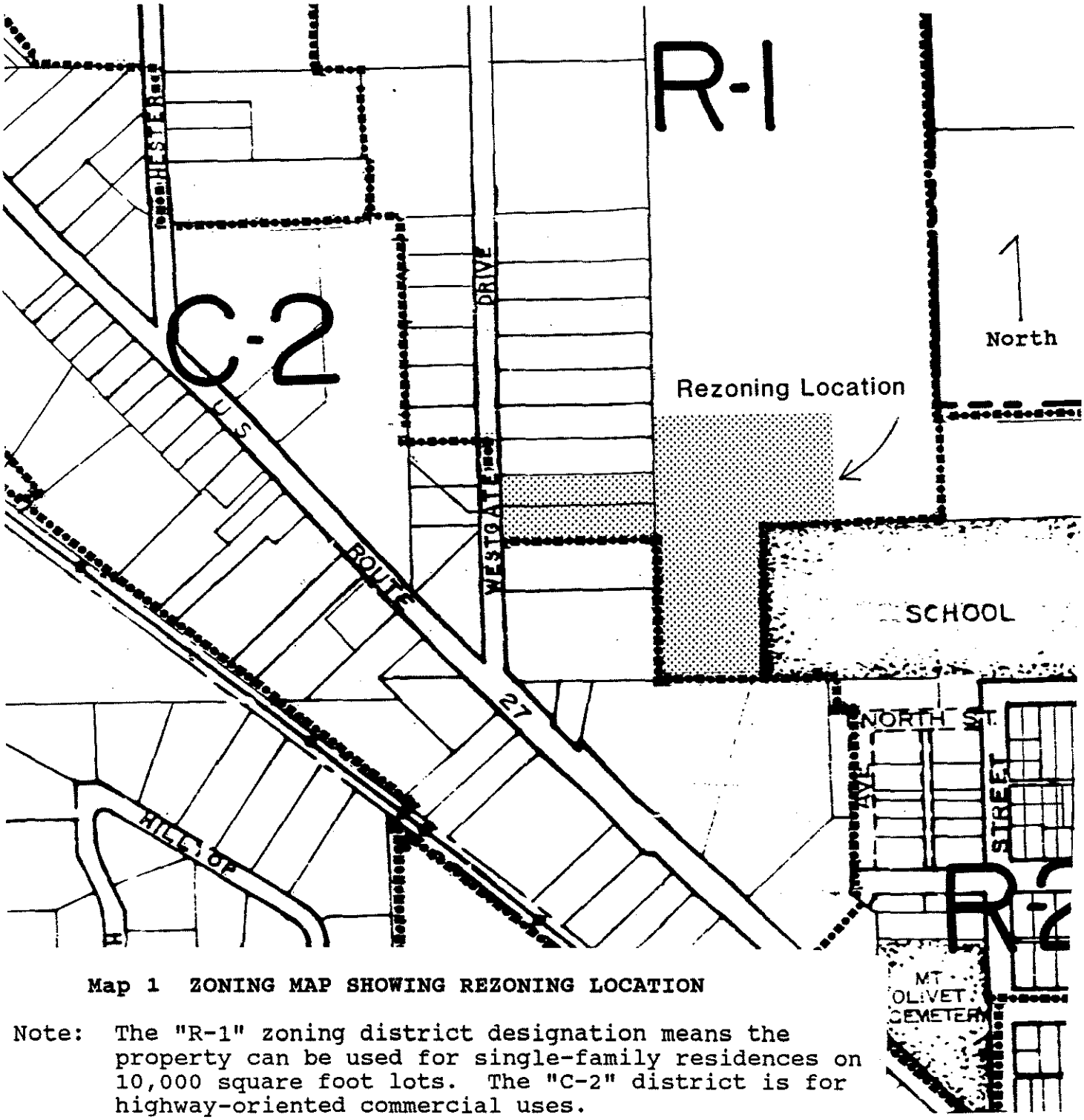
(2) If a development proposal is not consistent with the plan map or there is some ambiguity about the degree of consistency, the local government then reviews the plan's written policies to determine whether the proposal would otherwise be supported by them or be in conflict with them. If the government determines that the proposal is supported by or would not conflict with the plan's policies, it must find the proposal consistent with the plan.

Language describing this process could be included in those sections of the Ohio Department of Development's Model Zoning Code on the procedures for amending the zoning map (Section 607), or for reviewing conditional permits (Sections 520-550). Generally, it is desirable that a written report be prepared by the local government staff evaluating the development proposal against the comprehensive plan.

Two Examples

1. Analysis of Comprehensive Plan Map

Suppose, for example, that a local government received an application for rezoning from a medium-density residential use district (7-14 dwelling units per net acre) to a commercial zoning district. There was no question of interpretation of boundaries. To determine plan consistency, all a local government need do is refer to the comprehensive plan map. If the plan map (not the zoning map) shows the property in question as medium density residential, not commercial, then the proposed rezoning would not be consistent with the plan. Accordingly, the planning commission should recommend against the rezoning and the city council should vote against it.

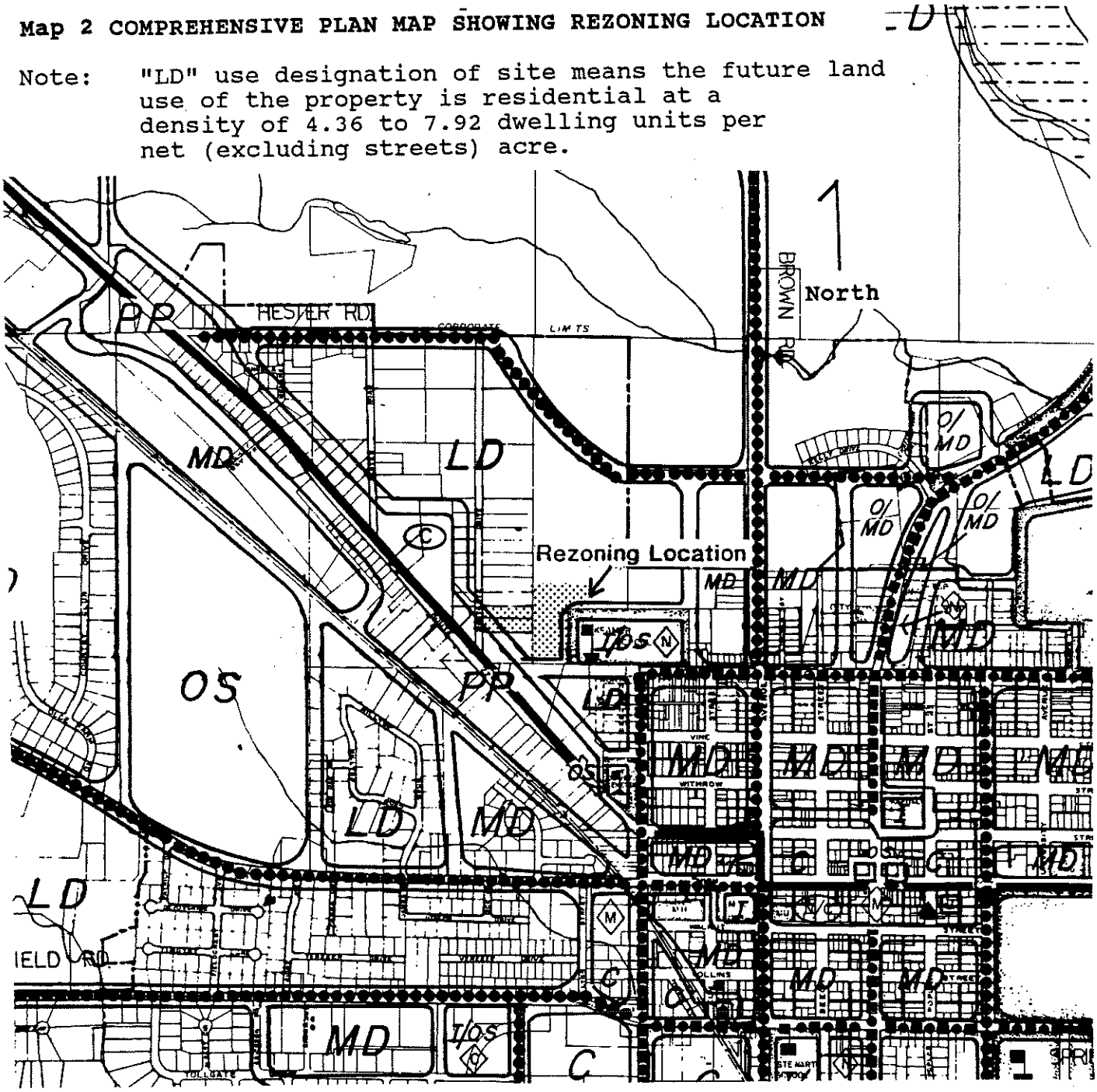


Map 1 ZONING MAP SHOWING REZONING LOCATION

Note: The "R-1" zoning district designation means the property can be used for single-family residences on 10,000 square foot lots. The "C-2" district is for highway-oriented commercial uses.

Map 2 COMPREHENSIVE PLAN MAP SHOWING REZONING LOCATION

Note: "LD" use designation of site means the future land use of the property is residential at a density of 4.36 to 7.92 dwelling units per net (excluding streets) acre.



2. Analysis of Comprehensive Plan Policies

What about a more complicated situation, where an interpretation of boundaries and written policies is needed? An applicant has proposed rezoning 9 acres of land near the northeast corner of U.S. 27 and Westgate Drive in the City of Oxford from a low-density R-1 residential district (4-7 dwelling units per net acre) to a C-2 general commercial district (see Map 1: subject property is shaded). Two single-family residences are located on part of the property. The applicant intends to combine the 9 acre parcel with existing C-2 property at the corner to develop a 114,000 square foot shopping center.

The comprehensive plan map shows the property as being low-density residential, but property immediately to the south is subject to a "precise plan" designation in which "commercial land uses are to be concentrated". A precise plan shows proposed land uses, ingress and egress, and necessary highway improvements in a detailed manner to control off-site development impacts. The exact boundary between the precise plan (PP) and the low-density residential (LD) designations on the plan map are, for the sake of discussion, not entirely clear (see Map 2).

What written policies in the plan would help in understanding whether the rezoning should be granted? One policy in the plan reads:

> The City will encourage development of land already zoned for commercial land uses prior to rezoning of additional land.
>
> Land use in the City is not static, but there should be valid reasons for changing the existing uses. Requests for additional commercial zoning should be carefully analyzed to verify whether or not conditions have changed sufficiently to warrant approval of the request. Before business uses are allowed to expand or intensify, a clear need should be demonstrated and protection of adjacent uses assured.

A staff analysis on the availability of additional commercial land discloses that, within a mile of the site, there are 15 acres of vacant commercially zoned land, consistent with locations for such uses in the comprehensive plan. The comprehensive plan map also designated an existing shopping center area about 1/4 mile to the northwest of the site as a community shopping center. Finally, the plan's future land use projections show that only 9.5 acres will be needed in the next 15 years for commercial land use.

Another plan policy states:

> New strip commercial development will be limited to principal arterial streets as shown on the comprehensive plan map as being subject to a precise plan.

Since the rezoning request involves two single-family lots in a residential subdivision, another policy, dealing with conversion of such lots to commercial uses, needs to be examined. This policy states:

> The City will permit expansion of commercial uses into or within residential areas only if the expansion maintains or improves the residential desirability of the affected neighborhoods.

If such expansion occurs, efforts should be made to improve the relationship between the business and the neighborhood. Proper vehicular access should be provided, and consideration should be given to the design, location, and arrangement of the buildings, parking areas, signs and lights. Effective vegetation or architectural buffers should be provided between business and residential uses.

On the basis of this analysis, the commission should find that there is adequate existing vacant commercially zoned land -- at least 15 acres -- whose location is consistent with the Plan's commercial land use designations, and that the proposal, which would require the rezoning of land within built-up residential areas as well as vacant residentially-zoned property well beyond the boundary limits of the precise plan designation, would conflict with both the comprehensive plan map and its policies. Therefore, the rezoning proposal should not be granted, because of its inconsistency with the plan's policies.

Keeping the Plan Current

Keeping the plan current is very important, and reviewing the plan map and policies should be done on an annual basis by the local planning commission. That way the local government can take advantage of new information or trends that have surfaced since the initial adoption of the plan.

Having an up-to-date, competently prepared plan assures that the local government will have an accurate framework for making decisions that will affect the entire community. The plan can also serve to coordinate and harmonize the efforts of various actors, both public and private, in achieving community objectives. Finally, a plan provides developers and others with a prophecy of public reaction to specific development proposals. In doing so, the plan guards against arbitrary treatment of development proposals by setting out in advance the mapped and written policies by which they will be evaluated, thus safeguarding a local government from legal attack.

ZONING AND SUBDIVISION REGULATIONS

By Larry L. Long [1]

Traditional planning theory says that the use of land development controls is a method by which to implement a comprehensive community plan. Under this concept the various regulations controlling development such as zoning, subdivisions rules, building and housing codes, and urban sediment control standards are an integral and essential part of the community planning process.

It is clear, however, even to the casual observer, that in Ohio the classic theory does not closely resemble the day-to-day process of local governments regulating development. The emphasis is not on planning; it is on development and detailed standards. Too many communities enact regulations that often conflict, are not coordinated, and may cause delays and unnecessarily increase the cost of development. The challenge is for counties, municipalities and townships to adopt regulations that are coordinated and reduce time delays, yet assure quality development will occur while not adversely affecting adjoining property owners or increasing costs generally to the public. Under Ohio law and our governmental structure, this is no easy task.

It is my view that Ohio's enabling statutes and government structure make it difficult to assure that good development will occur. Simply stated, progressive, humane, and functional developments occur in spite of disjointed regulations, not because of them. The regulations do provide needed protections against those few unscrupulous developers that somehow stay in business, but for the large majority of good developers, regulations often hinder design innovation and progressive development. The difference in the nature and purpose of zoning and subdivision regulations is a case in point.

Let us first start by attempting to differentiate zoning from subdivision regulations. Zoning regulations are generally enacted to control how land is used. Subdivision rules, on the other hand, regulate the division of real property and how improvements are constructed on the land. Ohio law delegates zoning authority to counties, townships, and municipalities. Zoning may be adopted in the interest of the public health, safety, general welfare, morals, comfort, or prosperity. Zoning may also regulate the height, bulk, location, set back lines, area, dimensions and sizes of buildings, and the uses of buildings, structures, or land.

Subdivisions controls, on the other hand, may only be enacted by municipalities and counties. These rules are to govern plats and subdivisions to provide for the coordination of streets with existing streets, for the proper amount of open spaces, for traffic circulation, for utilities, and for the construction of improvements for common use. Thus, under Ohio law the distinction between zoning and subdivision regulations appears to be quite simple and clear. Zoning controls the basic use to which land may be put. Subdivision regulations control how the land is divided and how essential improvements are designed and constructed.

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[1] Larry Long is the Executive Director of the County Commissioners Association of Ohio, and has an extensive background in local and state planning in Ohio.

But to those more familiar with the development process, this seemingly clear distinction is misleading. The more usual situation is that there are internal conflicts between the regulations. There are often significant overlaps and duplications. These problems are the result of two major factors. First, different governmental jurisdictions may have responsibility for the respective zoning and subdivision regulations. Second, the development, adoption, and amendment of zoning and subdivision regulations, even when the same governmental jurisdiction has the authority, are often accomplished at different times by different persons, and the regulations essentially become two separate sets of rules, often with internal conflicts.

Present Ohio law creates the opportunity for a hodgepodge of local regulations with different jurisdictions having administrative responsibility. Municipalities may zone within their municipal boundaries, but may also exert subdivision control authority in an area that extends up to three miles outside the city limits. In the case of a village, this area of "extraterritorial jurisdiction" may be up to one and one-half miles beyond the village limits, but only if the county contains no cities.

Counties may adopt subdivision regulations and may enact zoning on a township-by-township basis, if approved by the voters in the uncorporated areas. County subdivision regulations do not apply within the city's three mile area unless the city voluntarily surrenders its jurisdiction or unless there are more than five cities in the county. In addition, while municipal design standards apply within the three mile "extraterritorial area", county improvement standards, not municipal standards, are in effect. Finally, different administrative bodies are often responsible for county zoning and subdivision review functions.

Townships may not adopt subdivision regulations, but may be responsible for zoning if the unincorporated area's residents vote in favor of zoning. The acceptance of roads and construction standards, however, are a county responsibility, and the approval of septic tanks is the job of the county health department.

With such potential for disjointed administrative responsibility for the control of land development, it is no wonder that developers are often frustrated and oppose further regulations. The system itself encourages conflicts, duplication, and time delays. This potential for conflicts is greater in the unincorporated areas of the state. This results primarily because in general townships adopt zoning while the county exerts subdivision control authority. In areas where municipalities exert "extraterritorial" subdivision authority, the potential exists for three different jurisdictions having regulations that must be met: the county's subdivision improvement standards, the municipality's subdivision design standards, and the township's zoning. It is a wonder that such a system works at all. Furthermore, in areas without zoning, efforts are sometimes made to control via subdivision regulations certain development activities that are more properly handled through the zoning process. These efforts at "back-door zoning", while probably illegal, are seldom challenged, and may be justified in terms of requirements related to on-site sewage disposal systems.

In order to solve these problems, the reform of Ohio's enabling statutes is essential. The emphasis of such changes should be clear, broad, and direct authority to jurisdictions that will administer regulations in a coordinated and professional manner. The changes should provide for a single body of regulations combining at least present zoning and subdivision regulations into a comprehensive development code to assure coordination. Hard questions need to be asked: Should zoning in the unincorporated area require a popular vote? Should municipal extraterritorial subdivision authority be retained? Should municipalities be given the authority to enact extraterritorial zoning? Should townships be granted subdivision control authority? Should all zoning and subdivision control in unincorporated areas be the responsibility of the county?

Such reforms will be difficult to achieve. The fears and vested interests of local governments, home builders, realtors, and other powerful interest groups may make the challenge impossible, but the effort should be made. In the absence of such statutory reform, however, increased efforts should be made to assure that development regulations are properly coordinated, do not unnecessarily increase the cost of development, and promote progressive development.

THE ROLE OF A PUBLIC LAWYER IN ZONING

Michael E. Minister, Esq.[1]

> I don't think things are ever exactly the way one expects, and I don't think things are ever the way one assumes they are at the moment. What I actually think is that one has no idea of what things are like, ever.[2]

Two hopelessly lost hot air balloonists were hovering at treetop level over the back yard of a fellow who was working in his rose garden. Leaning out of the gondola, one balloonist hollered, "Hey buddy, can you tell us where we are?" Looking up, the gardener replied, "Yes ... you're in a hot air balloon!" The balloonist looked at his companion and said, "Isn't that just like a lawyer?" "How in the world, " asked the second man, "do you know he's a lawyer?" "Because," came the reply, "what he tells you is absolutely correct, but it doesn't do you a damn bit of good!"

This paper is written in the hope that it will do the reader at least a "bit of good" only because it represents the reflections of a lawyer who has been involved over the past fifteen years in more than a few municipal zoning issues. During those years of countless interesting requests for advice and counsel, I have come to realize that there is, indeed, an important role for the public lawyer (i.e., law director or county prosecutor) in zoning matters. It is, however, a role characterized both by specific responsibilities and definitive limitations. And, in my view, a public lawyer and his client city, village, county, or township will find satisfaction in the results they achieve only if they both clearly understand and respect the distinction between those responsibilities and limitations.

This paper is not intended to be either a treatise on the law of municipal zoning or advice on specific zoning issues. In spite of the rather annoying fact that lawyers are inclined to charge a fee for their services, there is absolutely no good substitute for seeking and obtaining legal advice on specific zoning or, for that matter, other issues when the circumstances warrant.

My experience is that public clients, when faced with the choice, would much rather pay their lawyer a relatively small amount of money to keep them out of trouble than pay him a relatively large amount of money to get them out of the trouble they would never have been in had they sought his advice in the first place. While I have had some contact with literally hundreds of zoning

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[1] Mr. Minister is a partner in the Columbus Office of the law firm of Baker & Hostetler. Since 1975, he has served as Director of Law for the City of Worthington and has represented a number of public sector clients on a variety of zoning and other issues.

[2] Deborah Eisenbert, "Transactions in a Foreign Currency," New York Times.

issues in my tenure as a law director, no two circumstances that I can remember were ever exactly alike and, consequently, I have concluded that zoning questions do not lend themselves to "pat" answers. Success comes from knowing what questions to ask and when to ask them, and from having a person to answer them.

Most of what is discussed here is nothing more than a recitation of professional experiences. The way I have "played" my role as a public lawyer in zoning issues is not the only way to play it. In fact, it may not be the right way for anyone but me! There are not books or manuals or "scripts" which tell a public lawyer how to act. In truth, what a public lawyer really needs to do is develop a professional style which suits his client...that style will define his role. The point is simply that a public lawyer and his client must find a comfortable way of working together on issues that sometimes get difficult. I am certain, however, that public entities will best serve their constituents by engaging a lawyer who not only understands, but genuinely enjoys dealing with, zoning issues. While giving advice on zoning issues is part of the professional responsibility of public lawyers, they can find great personal satisfaction in doing so since zoning is important simply because it, unlike anything else about local government, so profoundly affects the qualify of life of a community.

A Zoning Question Is Not Always A Legal Question.

One Monday night early in my career, I sat through what seemed like a week of fairly nasty neighborhood testimony before city council in opposition to a proposed gasoline service station rezoning. After being threatened by his constituents with everything except bodily harm if the rezoning was approved, a new member of city council turned to me and asked, "What shall we do?" Resisting the temptation to suggest that we turn off the lights and go home, I answered "You should do what your judgment tells you is best, taking into consideration the right of a property owner to make a reasonable use of his property and the right of the city to control the use of private property in the interest of the public health, safety, and welfare." I'm not at all sure he understood the answer any more than I was confident that it was correct, but it sure sounded right! I hope (and believe) it was "right" only because I said the same thing about a month ago.

What struck me that night ... and it has happened a number of times since ... was that I alone (and without casting a vote) could have decided whether or not the rezoning request was approved. All I would have to have said was "If you don't want a gasoline station on that corner, vote "no" on the ordinance." I am absolutely sure that such "advice" would have resulted in a unanimous "no" vote because no one in the room (except obviously, the oil company representative) wanted another service station on that or any other corner in town, even though it was unquestionably a reasonable use of the property. The members of city council would have been relieved of a difficult decision on the theory that they were "only doing what our lawyer said we could do." My public popularity would have soared, not that it much mattered, since my position as law director is appointed and not elected. I am also sure that the question was not a legal one.

Public lawyers and their public clients, whether county commissioners, a city or village council, a township board of trustees, a planning commission, or a board of zoning appeals, need to understand that not every zoning question is a legal question. In my view, the public lawyer is obligated to focus his professional energy on helping his client get to the point of exercising judgment, but once that point is reached the decision must thereafter be left exclusively to the public body which has the authority and the responsibility to make it. A public lawyer is not, directly or indirectly, a member of city council or any other public body, and neither he nor his client should ever think otherwise. Prefaced with an explanation, public lawyers need to say "That is not a legal question!" if it is not, and their public clients need to understand what he means.

By the way, the gasoline service station rezoning request was approved.

A Telephone Call Can Ruin Your Entire Day.

A lawyer with an attention for detail that would drive a bean counter crazy telephoned one day to inform me (too happily, I thought) that, in his opinion, the city zoning ordinance was invalid because it had not been advertised for public hearing before it was adopted. After spending a day hovered over the microfilm machine at the local newspaper office, I concluded that he was right on at least one score ... a notice of public hearing on the zoning ordinance had not been published. The lawyer took the rather irritating position that a property owner(i.e., his client) could, in the absence of a valid zoning ordinance, use his property for anything he wanted to use it for, except "perhaps" a public nuisance, and informed me that his client was going to file an application for a building permit and pursue it to the "highest court in the land" if the permit was denied! While I was not at all certain that the city could win the case, I was sure that we did not want to be without a zoning ordinance.

That telephone call ruined my entire day. In fact, it ruined the better part of an entire summer. Because it was a time of unprecedented growth in the community, the city had a problem of potentially enormous proportions, and it was clearly a legal one. It just needed solved ... swiftly, correctly, and calmly. We developed a plan and a step-by-step checklist to re-enact the entire zoning ordinance. The city charter required, for reasons that are unfathomable, that each ordinance be "read aloud," so we read it aloud ... word by word. Took us most of a morning; no one listened. (We later amended the charter and no longer read anything aloud except the title of an ordinance.) After it was all over, I am sure we had the "most valid" ordinance ever enacted by a city council ... anywhere.

There were two lessons in that experience which I hope have made me a better public lawyer. The first is that, no matter how well they usually do their jobs, public officials (including public lawyers) sometimes make mistakes, not because they're stupid, but because they're human. Over the nearly forty years of her service to the community, the city clerk had caused hundreds of public hearing notices to be published. As far as I know, the zoning ordinance was the only one she ever missed getting in the paper. Given the choice, I wish she had missed some ordinance other than the zoning ordinance. But I didn't have a choice ... she missed it and there was a problem to solve.

The second is that a public lawyer sometimes just needs to "take charge" and manage the solution to the problem. There never seems to be a shortage of folks who, because they like it, are willing to worry...let them. The role of a public lawyer, whose client is really in a difficult situation, is to (a) be confident that the problem can be solved (and there is always a solution); (b) after considering all of the options, be certain about precisely what needs to be done; and, (c) after communicating the solution, be responsible for guiding his client through the process. While others worry, it is the public lawyer who must focus his energy and professional skills on achieving the right result. Public clients should expect no less.

Because we chose not to acknowledge publicly the existence of a problem with our zoning ordinance, to this day there are not more than a dozen living people who know that, for a time, the City was probably without any zoning controls. We did not talk about the problem any more than we had to, and, to his great credit, neither did the lawyer who called me. The city clerk resorted to a prayer for Divine intervention while I resorted to the law books for Judicial intervention. Her prayers were answered -- the property owner decided not to pursue the building permit, and I didn't have to call the judge. In the meantime, we reenacted the zoning ordinance, after publication of a notice of public hearing. The most interesting thing about the entire ordeal was that no one showed up for the public hearing!

What About Goats?

Since I apparently won a contest in which "junk mail" was the first prize, I have my secretary open the mail. Several years ago, she walked into my office with the "first class" stuff and, in a moment of understatement, said "This one is different." There was a letter from a public client asking me to render a legal opinion on whether the zoning code permitted "harboring animals" in a single-family residential zoning district. Seems some new folks in town had decided to take up raising goats. The goats were doing all of the things that goats do, apparently quite frequently, right there in front of God and the neighbors. The situation was offensive to the senses and sensibilities of the urban populace; something had to be done.

Ohio law and all municipal ordinances with which I am familiar require a public lawyer to render opinions on questions of law. I once rendered a brilliant opinion on the wrong question. Since that time, it has been my consistent practice to get requests for legal opinions in writing, only because it was tough for my client to understand why his lawyer gave him the answer to a question he didn't ask.

There are two nice things about legal opinions. The first is that they frequently result from questions that have no answer, like "How high is 'up'?" The public lawyer can, in response to such questions, give his client the answer he wants. Tell me "how high" you want "up" to be, and I'll give you an opinion telling you it's that high. Makes the client real happy. The second nice thing about legal opinions is that they are only opinions. No one has ever asked me a question that had an obvious answer. Therefore, while I take requests for legal opinions quite seriously, no one (including the two lawyers on city council) ever says categorically "You're wrong!" If the reaction to the opinion is negative, the comment is usually either "I disagree" or "I didn't like your opinion."

In my view the role of a public lawyer is to render an opinion which represents his honest and reasoned assessment or interpretation of the law related to the question or issue, without regard to whether his client is going to "like" the opinion or not. Sure, I would rather render an opinion my client likes, and I will if I can; but I have always assumed that he is only willing to pay my fee for advice and counsel which I truly believe is correct. And my feelings are never hurt if my client chooses not to take my advice or follow my opinion, although it doesn't happen very often. My role, if you remember the introductory section of this paper, is to take my client to the point of decision and then let him make it.

Fortunately, before I had the chance to consider my response to the request for the opinion, one goat died and the other one ran away.

The Light At The End Of The Tunnel Might Be A Freight Train.

The very best zoning lawyer I know stood before city council one night and said, on behalf of his client, "Either give us the rezoning we want or leave the present zoning on the property alone." The rezoning request was, at best, controversial, and no one wanted the property rezoned to the category requested by the property owner. On the belief that the lawyer had made an offer which made the decision real easy, city council left the zoning on the property alone. Faced with a difficult decision, council thought his statement was "a light at the end of the tunnel." I wish I had been paying more attention. As it turned out, the "light" was on the front of a "freight train" which nearly ran over the city on its way to the Ohio Supreme Court.

The property involved in the rezoning request was a corner lot at one of the busiest intersections in the county. The remaining three lots at the intersection were all zoned in a "commercial" category and the property involved in the rezoning request was zoned "single family residential." Nobody in his right mind would have built a house on the vacant lot, but it was then the practice of the city to leave the zoning of such property "alone" until the "right" request to change it was received. That practice was a mistake, at least in this instance, because the property owner was denied, by the practice of the city, the right to make any reasonable use of this property. The existing single-family residential zoning was, therefore, unconstitutional and, in fact and effect, the city had "taken the property without due process of law." The city got sued. As it turned out, the Ohio Supreme Court eventually gave city council a "second chance" to rezone the property to a constitutional zoning category. The category selected the second time around was not the category the property owner wanted, but I am satisfied that it is "right" only because there is almost always more than one zoning category which will withstand a constitutional attack.

Those events happened a long time ago, and I am not now sure why I allowed my client to get into the problem. It may have been that the city was willing to "chance" getting sued simply because the practice made for "better" zoning results. It may have been that the law of zoning was not as "developed" then as it is now. It may also have been that I just wasn't thinking enough about the consequences of the practice. Whatever the reason, I now know that a public lawyer must clearly and carefully consider all of the ramifications of a zoning action. Zoning authorities often like to impose "special requirements" on property owners by their actions. Zoning reverter

clauses, specific use limitations, and extraordinary setback requirements are just a few examples I have observed some attempts to "flex the municipal muscle." The public lawyer must take a dispassionate view of those activities and, if he is convinced that they are "beyond the realm of municipal authority," he needs to say so.

It's interesting to me that the now commercially-zoned lot at that busy intersection is still vacant.

What's In A Name?

I represent a dentist named Toothman, my kids see a doctor named Lawyer, and I am a lawyer named Minister. One of the nicest compliments anyone ever paid me was to observe that I could quote the zoning code like a Southern Baptist preacher could quote the Bible. If that is true (but I'm inclined to think it is not), it probably has more to do with my last name than anything else. In most areas of the law, there are some real basic documents. Tax lawyers have the Internal Revenue Code; labor lawyers have the National Labor Relations Act; and antitrust lawyers have the Sherman Act, just to mention a few. All the good lawyers I know in those areas of practice have read and understand their basic documents. Zoning lawyers have zoning codes which they ought to read and understand.

I commend the Ohio Department of Development for its work on the State Model Zoning Code; it is an extremely well-conceived and useful document. In my opinion, however, it should be viewed and used by a city or a village or a township or a county as a place to begin the consideration of zoning issues. The goals and objectives of zoning in each community are different, and so the zoning code in each community must be different. The role of the public lawyer is to mold those differences peculiar to his public client into a document that works for them. It is no small task, but it can sure be a rewarding one.

One Last Word Or Two.

Even though I have this great fear that no one but my secretary will have read this far, I want to close this too rambling commentary on the life and times of a public lawyer with a few words from my eighty-eight-year-old friend and partner, Paul R. Gingher. Mr. Gingher is a lawyer's lawyer. In a speech before the Columbus Bar Association in 1961, he made the following observations:

> Is there something different -- is there something that sets apart the practice of law from other pursuits? I believe there is, because the experience and service of the lawyer runs the gamut of every human emotion and experience in the advocacy of his clients' cause. His service is not isolated with a beginning and an end for others to take up where he leaves off. Whether his client is an individual, a partnership or corporation, or a government, he becomes part and parcel of the overall purpose, philosophy and objective of this client. And so he keeps alert and imaginative, and his physical energy responds in kind.

I hope so, Mr. Gingher, I really hope so.

JACK OF ALL TRADES: THE TOWNSHIP ZONING INSPECTOR

By Michael P. Kurilla, Jr. [1]

Upon accepting the position of Austintown Township Zoning Inspector in 1982, my early expectations of the role of the Zoning Inspector within the structure of township government were relatively one-dimensional and radically different from the multifaceted roles demanded in fulfilling the responsibilities of the job some six years later. The duties and responsibilities of the Zoning Inspector set forth in Chapter 519 of the Ohio Revised Code and the Township Zoning Ordinance identify the role as essentially a ministerial one, that is, enforcing the provisions of the local ordinance with respect to permitted land uses, authorizing construction within the context of district regulations in each of the delineated zoning districts, and initiating the enforcement action necessary to eliminate violations. After serving in the position of Zoning Inspector for one year, however, I quickly learned that, just as there is no such thing as a routine day concerning the types of tasks to be performed, the role itself is much more demanding and complex than it appears to the general public or other professionals with whom the Zoning Inspector comes in daily contact. The Zoning Inspector obviously sits as one department head within the bureaucratic hierarchy of township local government; but in undertaking the various tasks associated with his position, very few people realize the Zoning Inspector must in fact be a "jack of all trades" in order to be effective and successful in this profession: administrator, inspector, interpreter, investigator, recordskeeper, cartographer, quasi-lawyer, quasi-psychologist, referee, planner and public relations figure.

The Zoning Inspector as administrator is actually a two-fold role: Administrator with a capital "A", directing and overseeing the operation of the Zoning Department within the framework of well defined categories of specific job functions; and administrator with a small "a", allocating the Inspector's time in each of these categories within the context of a comprehensive office schedule. The Austintown Township Zoning Office staff consists of two full-time employees -- the Zoning Inspector and one assistant/secretary. Therefore, the Zoning Inspector is perforce the office administrator and field inspector in the daily operation of the department. The assistant/secretary has a demanding and extremely important position, in that this individual must be competent in providing accurate information to the general public and professionals concerning zoning regulation inquiries, must exercise proper judgment with respect to the issuance or disapproval of zoning permit applications while the Inspector is out of the office, and must perform all of the secretarial tasks required to maintain a current office paper flow (i.e., typing of letters, violation notices, court affidavit texts, Zoning Commission zone change case mailings, Board of Zoning Appeals case mailings).

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[1] Mr. Kurilla has served as the Zoning Inspector of Austintown Township in Mahoning County since 1982. It is a suburban residential township of 38,000 with about 15,000 housing units and two large-scale industrial complexes.

This individual must have as thorough an understanding of the Zoning Ordinance in toto as the Inspector himself. Most importantly, the office assistant must possess the temperament to deal with the telephone call or personal visit of the "irate violator," who just received a letter or notice of violation, and who invokes the sacrosanct right of the property owner ("I pay taxes on the property and I have the right to do anything I please on the property"), and the predictably "unsatisfied complainant," who cannot understand the necessity of the Township providing notice or due process to a violator. At times, sharing the neighborhood conflict between the violator and the complainant can be quite a delicate balancing act. In some cases the assistant's position can be more difficult than the Inspector's in dealing one-on-one with the "irate violator". The assistant is the first line of defense for the Township, and usually must listen to the initial abusive call of the violator; however, when the violator calls the second time and speaks with the Inspector who actually signed the letter, the perceived symbol of Township authority, a remarkable metamorphosis has occurred, with the tone and content of the conversation oftentimes more sedate.

As the Administrator with the capital "A", the Inspector must handle the administrative work associated with the following functions: the review, approval or disapproval of Zoning Permit applications; the issuance of Occupancy Permits; the research and formulation of written determinations as to permitted/prohibited uses within the zoning districts; the processing, coordinating, and recording in the form of public hearing minutes zone change cases as Clerk for the Zoning Commission; the processing, coordinating, and recording in the form of public hearing minutes appeal cases and conditional use permit applications as Clerk for the Board of Zoning Appeals; the preparation and presentation of monthly, annual, and special reports for the Board of Township Trustees; the investigation and initiation of enforcement action regarding complaints alleging violations of the Zoning Ordinance; field inspection work -- initial complaint inspections, reinspections, property surveillances in development of case files preparing for court cases; coordination or Township review/comment in the platting/replatting process pursuant to County Subdivision Regulations; and the channeling of residents' complaints and information requests to other departments/agencies of primary jurisdiction -- Township Fire Inspection Bureau, Township Road Department, Township Police Department, County Board of Health, County Engineer's Office, County Planning Commission, County Prosecutor's Office, County Sanitary Engineer's Office, County Auditor's Office.

In the case of the administrator with a small "a", one of the most difficult things for the Inspector to learn, yet one of the most essential in order to effectively run the office, is how to budget his time according to the diverse demands of a hectic daily schedule. I can think of no other profession of which it can be said there are no two days alike, or in which one can describe such a thing as a "typical" or "routine" day. Although there are certain office routines and administrative techniques which can be employed to save time, there is never a routine or identical day. One of the contributing reasons for this is that, although there are certain scheduled appointments on any given day, since the Zoning Office is providing a public service, one can neither know nor predict who is going to walk in the door next with a large-scale construction project proposal or a minor complaint. During the busiest quarters of the year, the spring and summer months when construction is booming, on one day the Inspector may never get to walk away

from the front counter, reviewing permit applications and blueprints; yet on the next day, he may never see the inside of the office while in the field, investigating complaints or verifying permit applications with their corresponding construction projects before filing the applications. And on the following day, the Inspector may perform a combination of these two activities, in addition to appearing in County Court on a zoning case, attending a Planning Commission meeting, and concluding the day with a Public Hearing of the Board of Zoning Appeals, adjourning at 10:30 P.M.

One of the most important organizational tools is the keeping of a master calendar, and also a secondary calendar. Every business day begins with reviewing, updating, and scheduling public hearing dates, appointments, on-site inspections or reinspections of properties, court appearances for that day, week, month, and quarter, making certain that all of the pending and upcoming elements of that week's work schedule are on track. It is quite conceivable that there can be fifty balls suspended in the air simultaneously, each representing a specific case tracked on a time line from a twenty-day notice period to some fourteen months, regarding one pending Common Pleas Court case. For example, at one point in the month of August, 1988, the Austintown Zoning Office had twenty-eight notification letters of violations to residents pending, two county court zoning cases pending, two Common Pleas court cases pending, three cases set for final public hearing before the Board of Township Trustees, three cases scheduled for public hearing before the Zoning Commission, two new zone change requests filed to be processed, and three new appeal cases filed to be processed. Since zone change and appeal cases must follow the prescribed time frames for notice set forth in ORC 519, it is especially important that these notice procedures are strictly adhered to, so as not to create a procedural technicality for an attorney to pounce upon in a contested or controversial case. I recommend the keeping of two master calendars, one kept by the Inspector and one by the assistant/secretary, serving as a double check of scheduled public hearing dates, mailing and publication dates, preliminary hearing and court trial dates. I also maintain a secondary calendar for daily appointments, scheduled inspections and reinspections, and particularly as an office log, in the event it is necessary to recount some months later a specific date of a meeting, event, or important telephone conversation associated with a case.

I was extremely fortunate in having inherited from my predecessors an excellent office filing system and standardized information "lead sheet" accompanying zone change and appeal cases, dating from the institution of zoning in the Township in 1948. The information "lead sheet" or cover sheet provides a one page record of the step by step chronological development of the case, from the date of filing by the applicant to the final action taken by the Boards. These internal office procedures have been only slightly modified over the course of six years.

What I came to discover, however, after some two years on the job, was that I was spending an inordinate amount of time in letter writing and case development of complaints/violations, and I felt as if I were invariably reinventing the wheel with correspondence associated with similar violations. Moreover, my spending far too much time in this one area of the office operation meant other areas were starting to be neglected, and the field inspection work, investigation follow-ups, and permit application inspections

were backing up and creating an almost impossible backlog to keep current. Therefore, I developed a standardized "Complaint Record" form and established a "Model Letter" and "Model Affidavit" file. The standardized complaint form provides a chronological development of a violation from the date a complaint is received by the Zoning Office until its final disposition. The "Model Letter" and "Model Affidavit" files provide examples of the various types of correspondence sent and affidavits filed in county court, so that, when a similar set of facts present themselves in a new case, the basic format of these previous letters/affidavits serves as a model. These files are kept current as new cases and types of violations are investigated each year, and these files are frequently used as a reference source in sharing methods of approaching a specific violation with other Zoning Inspectors.

Lastly, as a means of forcing myself to keep on track in all of the categories of duties demanding attention, there are certain "routine inspections" scheduled every week to provide windows or short term progress reports as to how far along the different time lines cases have progressed. Every week I write into the office work schedule two mornings, or in the busy spring and summer months three half-days of the five day work week, dedicated solely to on-site property inspections pursuant to complaints of violations. The Zoning Office makes a practice of making the initial inspection of a complaint within at least forty-eight hours of receipt of the complaint. When an initial letter is written to a property owner/resident requesting elimination of a violation, a twenty-day notice is issued against the property owner and sent by certified mail, ordering the property owner to comply within twenty days. If this notice/order is ignored, an affidavit is filed in county court. Consequently, during these scheduled mornings of on-site property inspections, I am inspecting numerous properties at various stages of the enforcement process.

I also write into the office work schedule a quarterly progress check on all zoning permit applications not yet filed as "construction completed". This, in fact, forces me to get out into all four quadrants of the Township, monitoring the progress of construction projects in all three categories--business, industrial, and residential. It is during this quarterly five day blitz of the Township that the Inspector many times catches new construction started without permits having been issued, which have not already been reported to the office by the "neighborhood watchdog," the dreaded busybody on each street who informs the Zoning Office any time the sound of a hammer is heard.

As the reader can see the Zoning Inspector's "time" is always at a premium, requiring the setting of priorities, the balancing of activities, and the juggling of scheduled meetings and hearings, while assuring that work is being performed and progress is made in each category. Perhaps the most difficult thing for the neophyte Inspector to learn is how to accomplish so much within an 8-10 hour work day. The quicker the Inspector acquires a feel for the proper allocation of time to these various categories and masters the roles of Administrator with the capital "A" and small "a", the smoother the office operation will be and the more tangible its success.

The role of the Zoning Inspector as "Inspector" is one wherein on-site private property inspection activities are conducted under the color of state and township flags concerning two basic inspection activities: inspections pursuant to complaints of alleged violations of the Zoning Ordinance; and follow-up inspections of zoning permit applications. In the latter case, the Inspector is verifying that the completed construction project conforms with the information contained on the zoning permit application before it is filed in the office. Although this can be very time consuming and take 1 1/2 - 2 weeks to complete, this is a relatively straight-forward, simple inspection, with the Inspector ultimately viewing some 200-300 residential, business, and industrial properties in various stages of construction every calendar quarter. The requisite tools brought to this on-site field inspection are also quite simple: a measuring tape, a pen, the permit application, a copy of the Zoning Ordinance, a well-trained weather eye, and common sense. On rare occasion (perhaps one out of every 500 projects) the Inspector might discover that the 10' x 20' family room addition represented on the permit application actually ended up taking the form of a 15' x 30' two-story structural addition encroaching on a rear yard minimum; or even more seriously, that the declared "storage area" above the proposed detached residential garage has been converted illegally into an apartment dwelling unit. This final permit application inspection, albeit predictably routine, is nevertheless essential to keeping the property owner honest and the Township safeguarded. While a professional may be able to deftly cover over a mistake in other businesses, there is one inescapable axiom in the zoning business -- mistakes made by the Zoning Inspector or a deceptive property owner are quite conspicuous and permanent because they are cast in concrete and mortar.

In the former case, the Inspector is conducting an initial property inspection, in most cases upon a complaint filed by a resident in the immediate area, to determine whether there is prima facie evidence of a zoning violation, to be followed by further investigation and the development of a case, or whether there is clear evidence on the property of an existing violation. The finding of three abandoned, wrecked, dismantled automobiles parked on residential property, for example, would provide clear evidence of a violation, with the Inspector then instituting the appropriate enforcement action by providing the property owner written notice of said violation. Whereas the finding upon initial inspection of auto quarter panels leaning against a detached garage, of auto parts strewn over the yard, of garage windows covered, but of no evidence at the time of auto body work being conducted, would represent prima facie evidence of a violation requiring investigation and subsequent monitoring of the property.

There are five basic types of complaints dealt with by the Zoning Office requiring an on-site property inspection by the Inspector: 1) the anonymous complaint; 2) the formal written complaint; 3) the complaint initiated by the Inspector; 4) the complaint discovered accidentally by the Inspector while en route to reinspect a property already identified as being in violation; and 5) a violation discovered by other Township department personnel or officials forwarded to the Zoning Office. The "anonymous complaint" is the most prevalent type received, coming from a truly anonymous caller refusing to reveal his identity, or from an individual who offers information on a quid pro quo basis (that is, I'll let the cat out of the bag concerning all the details associated with the violation, if the Zoning Office promises not to attach my name on the record as a Complainant). In many cases, depending upon

the severity of the violation, the absolute insistence on anonymity stems from a fear of reprisals from the violator. Some of the most violent arguments experienced in any Zoning Office center around a violator's invoking his presumed constitutional right to know who the complainant is who "turned him in". I strongly believe that the best policy to adopt is maintaining the Complainant's anonymity even if not requested to do so, thereby eliminating or at least minimizing further trench warfare in the neighborhood. The irate violator must be convinced that, no matter how this information was obtained by the Township, once it has been reported, the Zoning Inspector then becomes "the Complainant" who ultimately will file an affidavit in county court if the violation is not corrected. By the time the violator has walked into the Zoning Office to confirm the identity of the neighborhood busybody who turned him in, he usually has worked himself up against the culprit he has identified in his own mind, only to be further frustrated when the Zoning staff neither confirms nor denies his suspicions. Many violators would be quite surprised to learn that, instead of the next-door neighborhood whom he knows "for certain" reported the complaint, it often is someone he would least likely suspect who actually resides two streets away. The only exception to this rule of anonymity is a case in which a formal written complaint is received.

The formal written complaint is quite rare, perhaps constituting only one to three percent of all complaints received by the office. The complainant is a ready ally of the Zoning Inspector, unafraid of reprisals by the violator or his family members as a result of any enforcement action initiated by the Township, and eagerly willing to appear as a witness if court action is required.

The third type of complaint, the complaint by the Inspector, is discovered as a result of a random inspection swing through a plat or quadrant of the Township. Time demands being what they are, random inspections looking for violations cannot be scheduled as frequently as desired. The fourth type of complaint is again one discovered and initiated by the Inspector himself, only this violation is accidentally found right next door or in the abutting rear yard of a property already identified as being in violation. In this case, once the violator has received his letter, he is always incredulous as to the complainant, believing in his own mind that it must certainly be a nosy neighbor that the Zoning Inspector is shielding. Lastly, the Inspector is able to quickly move on violations, usually found in the business and industrial districts, as a consequence of complaints forwarded to the Zoning Office by the Township Fire Inspectors, Police Officers, County Board of Health Field Inspector, County Building Inspectors, Township Trustees, and alert Zoning Board members. The establishment and maintenance of an inter-department and inter-agency network of contacts is vital in the exchange of information necessary for the identification of violations and, more importantly, their investigation.

After having received hundreds of complaints and conducted countless investigations, I have isolated some "complainant types" and "violator types" which can be found in any community. Although the reader may find these stereotypes humorous, I am sure zoning officials can personally identify with each, and also add several of their own. First, we will examine the "complainant types". The "Retaliator" is a complainant who reports an alleged petty, borderline violation or what amounts to no violation at all as a

retaliatory strike against a feuding neighbor. Typically, this resident promptly complains to the Zoning Office on the heels of his neighbor having filed a complaint with the police department about the Retaliator's unruly juvenile. The "Meticulous Yardkeeper" is a complainant who manicures his lawn to the degree that not one blade of grass is ever out of place, and calls the Zoning Office about his neighbor who never cuts his grass, never paints his house, and has no refuse pick-up. The "Meticulous Yardkeeper II", a slight variation of the former complainant, becomes violently disturbed when his neighbor has as much as a portable bar-b-que or two stacks of firewood stored in the rear yard. The "Chronic Complainer" is a complainant who seldom reports an acute violation, but contacts the Zoning Office every time the wind blows leaves across the rear yards onto his yard. This type also has a companion, the "Chronic Complainer II", who can never accept the Zoning Inspector's explanation that there is no zoning violation on his neighbor's property and thereafter systematically contacts the County Commissioners, the Police Chief, the Fire Chief, the Township Trustees, the local radio talk show, the Governor, the Mayor's office in the adjacent city, and anyone else who will listen.

The "Noah's Ark Builder" is a complainant who reports he is in the process of constructing an ark on his property as a result of the Zoning Department staff having issued a Zoning Permit to his neighbor for the construction of a new detached garage, from which storm water runoff is flooding his rear yard and basement. The "Mason-Dixon Line Complainant" is a resident who attempts to interpose the Zoning Office between two feuding property owners who essentially have a boundary line dispute over fencing, trees, shrubbery or boundary pins. One case I can recount started out as a water problem complaint, with property owner "A" contending adjacent property owner "B" caused his rear yard to flood as a result of some landscaping work completed. Of course property owner "A" had to share some 75 color photographs with the Zoning Inspector in a forty-five minute presentation of the problem. Following a protracted dispute between the two, property owner "B" constructed a stockade fence along his side of the property line. The dispute predictably escalated. When property owner "A" refused to grant permission for his neighbor to stand on his property to paint the exterior of the fence (which was constructed right on the property line), property owner "B" proceeded to trespass and paint the fence. A policeman had to arrest property owner "B", who responded by countersuing "A" for malicious prosecution. The whole time, the Zoning Inspector had to step gingerly to keep from being drawn into this civil dispute. Finally, the "Exaggerator" is a complainant who hyperbolizes the facts surrounding an alleged complaint in order to stack the deck against his neighbor. After receiving several of these complaints, one quickly learns never to take at face value the alleged facts recorded on the complaint form before inspecting the property.

Next, we turn to the "Violator types". The "Sanford and Son" resident represents a violator whose residential property bears a close resemblance to a junk yard; however, from the violator's point of view, these items of junk and scrap stored in the yard in an exposed manner are priceless collector's items. Typically, this property owner is engaged in a pitched battle with his neighbors and the Zoning Inspector, and, attempts in vain to convince the judge that the Township objection to his modern junk museum somehow violates his rights as a property owner. As my predecessor often exclaimed, the only way the Township is completely rid of this type of violator is when he meets

his demise, and then the Zoning Inspector prays there are no heirs to carry on their "family tradition". The "Auto-Body-Garage-as-Hobby" violator has a propensity for collecting dismantled, abandoned, wrecked automobiles and trucks. The only problem with this resident's hobby is that all of these less than vintage vehicles are stored in an exposed manner in the yard, precipitating a neighborhood revolt. The "Auto-Body-Garage-As Business" violator represents an automotive Houdini who, in the early hours of the weekend morning, attempts to perform auto repair/auto body work on vehicles in his attached or detached garage. All of this is of course performed with the noise, smell, and activity associated with the commercial auto body shop. Usually this violator is unemployed or laid off, and comes into conflict with the local Zoning Ordinance and neighbors in an attempt to generate some income. The "Peterbuilt Perpetrator" is a violator who attempts to bring his commercial semi-truck cab illegally onto his residential property, mostly on the weekends when he knows the Township Zoning personnel are not working. This type of violation is always the most quickly reported to the office, given the neighbor's ire over the noise, smell, and aesthetics associated with bringing a commercial truck into the neighborhood; and it is invariably one of the most difficult violations to quickly eliminate. The "Trash Disposer" is a violator who finds no fault with "temporarily" piling his trash and garbage bags adjacent to his dwelling, in the rear yard, or at the street front property line before pick-up. The problem with this violator turns on the Township's interpretation of "temporarily" versus the property owner's. The "Neighborhood Entrepreneur" represents a violator who is an enterprising businessman who attempts to establish his retail or service business within his single-family dwelling, much to the consternation of his neighbors and the Township. This violator cannot understand why his "small scale" pizza shop, t.v. repair shop, sewing and sweeper repair shop, window frame shop, trophy shop, or potato chip warehouse business must be located in a legitimate business district. Surely, the Township is denying this upstanding, tax-paying citizen an equal opportunity to make a buck in the tradition of American business. Lastly, the "Cavalier Tenant" represents a tenant or lessee of a property who firmly believes he can do anything he desires on the property because the actual property owner is ultimately responsible for any violations and, moreover, the Township has no way of finding out the identity of the tenant.

Between 350-400 complaints are received by the Austintown Zoning Office annually. Approximately one-half of these concern the parking or storage of abandoned, dismantled, wrecked automobiles and trucks, or the storage of junk, trash, or other miscellaneous items and materials on residential property. The next largest category of violation, and one which consumes the most time in investigation, is the intermittent auto body shop operation in residential districts. Third in the order of violations reported is the parking of commercial vehicles on residential property. Fourth is the operation of advertised business in single-family dwellings. Lastly, the illegal conversion of existing dwellings to more dwelling units represents several complaints which address the fundamental nature of zoning itself. The most frequent violation encountered in the business and industrial districts deals with the enforcement of sign regulations, specifically temporary accessory signs, either exceeding the legally prescribed dimension, or illegally being placed on the public right-of-way, causing a safety hazard. Some complaints are filed following initial inspection with a finding of no zoning violations, some require a notification letter to the property owner, some a Notice of

Violation and Cease and Desist Order; some require weeks or months of investigation, and some 15 to 20 a year make their way to county court. One of the most frustrating and unpleasant parts of the job is explaining to a concerned complainant that the water runoff problem apparently caused by his neighbor legally falls outside the purview of zoning and represents a civil liability. From the posing of the initial question by the complainant, the Zoning Inspector immediately knows he will be engaged in a 20 to 25 minute telephone conversation, with the upset resident ultimately finding the answer to consult an attorney to pursue a civil remedy unacceptable and incomprehensible. No less comforting to an irritated complainant is the answer that he must contact another department or agency which has primary jurisdiction to resolve the problem (i.e., the County Board of Health, County Building Inspection, or County Engineer's Office).

In retrospect, of all of the complaints received in the past six years, the most humorous dealt with animal complaints, or what I refer to as the "ducks, chickens, and geese" complaints in an unincorporated township. When I was serving as an assistant to my predecessor, I received a telephone complaint one Spring day from a woman who was frantically screaming that her neighbor was keeping and selling dozens of ducks on the residential property. Being a neophyte field inspector, I braced myself for the worse case scenario as I approached the property, fully expecting to find the rear yard overrun by dozens of ducks. To my surprise and relief, what I found was one solitary duck kept in a pen at the farthest point of the rear yard, apparently an Easter pet of the property owner's little girl. The scariest complaint inspection ever experienced was conducted in August of this year, and started out as a routine complaint which quickly developed into an unexpected, dangerous situation. The Zoning Office received a complaint from a state institutional facility located in a rural section of the Township. The Operations Director of the facility complained that the adjacent residential property owner had six geese which were running into the street and stopping traffic, running amok through the neighborhood, and wandering onto their state property. On this particular day, the County Board of Health Inspector stopped into the office, so the two of us proceeded to the subject property. As I stayed in the vehicle filling out the requisite information on the complaint form, my Board of Health companion approached the property owner, who had just stepped out of his dwelling. Before I was able to join the discussion, I observed the property owner running into the house and then bolting out the screen door with a revolver in hand, screaming obscenities at the neighbors and advising us that he would make our job easy that day. Unable to tell the property owner that a small fenced area would resolve the problem, we watched as he began chasing the geese across the yard, taking aim and discharging the revolver. The health inspector and I cautiously retreated to my vehicle and radioed for a police cruiser. By the time the police Corporal arrived some four minutes later, the property owner had discharged some 30 rounds, leaving six dead geese, and two inspectors whose adrenalin levels had peaked. The lesson of that day was quite sobering. As an inspector, I never know what set of circumstances I may confront when stepping onto a property owner's private residential property. I must always prepare for the unexpected, because just when I believe I have seen it all, I will indeed be surprised.

The role of the Zoning Inspector as "Investigator" is one in which a case must be pursued to a second and possibly third step beyond the initial property inspection, with the Inspector acting as a quasi-detective. This is indeed the most interesting, challenging, and at the same time most frustrating and fatiguing roles. The Inspector must amass enough evidence to determine that a violation has occurred and warrants a Notice of Violation issued at step two; and, in pursing a case to step three. He must be able to produce enough evidence in court to obtain a conviction. As cited earlier, the finding upon initial inspection of automobile quarter panels leaning against a detached garage, auto parts strewn about the side and rear yards, and the garage windows covered immediately signals to the trained investigator that illegal auto body shop and repair garage activity is being performed on the residential property. One does not have to be a Detective Columbo to reach this conclusion; however, one "simple" task remains in taking the next enforcement step -- prove it!

While in graduate school, I was awe-struck by the simple yet very profound statement by the historian David Hackett Fisher in The Historian As Detective: "Questions are the engines of the intellect". so, too, as any professional investigator will readily admit, "questions" are the driving engines which propel every investigation. The good investigator never stops questioning his facts, evidence, and witnesses in a case until the case is closed and filed. An approach I adopted fairly early, which I believe to be extremely helpful, is to develop segments of a case and question evidence from three different perspectives: part detective, part prosecuting attorney, and part defense attorney. That is, while developing a case, step back and analyze the evidence from each of these perspectives, noting the strengths and particularly the weaknesses. In the long run this will relieve the Inspector of much anxiety and in some cases embarrassment once the attorneys begin their legal machinations with your zoning case.

During the entire time the Inspector as Investigator is developing a specific case, he finds that his available investigative tools are numerous, his investigative contacts are myriad, and his investigative methods are limited only by his own imagination and experience. The following are some of the indispensible investigative tools utilized by the Inspector as Investigator: copy of the local zoning ordinance; complete set of the Ohio Revised Code; 35 mm camera; binoculars; City Directory; witness statements; county plates or tax maps of Township; County Auditor's Duplicate on real property; roll-a-tape; Prosecutor's notice; notice of violation; cease and desist order; state complaint form; temporary restraining order; temporary/permanent injunction; pre-trial hearing; portable two-way radio/mobile radio; and administrative search warrant. The following investigative contacts represent an invaluable resource pool in the furthering of case investigations: fire inspectors, local fire department; uniformed policemen, local police department; assistant prosecuting attorney and private legal counsel retained by Township; Investigation Division Agent, Internal Revenue Service; Investigator, Permit Division, State Department of Liquor Control; Investigator, State Bureau of Motor Vehicles; Field Inspector, County Board of Health; other zoning inspectors within the county; Oil and Well Inspectors, Ohio Department of Natural Resources; County Auditor's Office; County Engineer's Office; postal authorities; County Game Warden; local newspaper reporters; title searchers, county court house; local businessmen in various fields of expertise; State Attorney General's Office; Secretary of

State's Office, Corporations Division; Ohio Environmental Protection Agency Investigator; Field Inspector, County Building Inspection Department.

The preparation and keeping of a complete case file during an investigation may mean the difference between the Township ultimately prevailing or having a case dismissed when it reaches court; and it may result in a defense attorney and defendant entering a plea, as opposed to going to trial. I am convinced that the taking of copious case notes represents the best method of building a solid foundation in the development of a case investigation, recording on the complaint investigation form everything the Inspector observes, with specific reference to the time and date. From the initial property inspection to each subsequent surveillance, whether on a routine case investigation or a more complex case requiring weeks or months to fully develop, the Inspector should write down in his case notes a comprehensive description of the facts. Even though certain information may seem irrelevant at a given time and stage in an investigation (for example, the recording of "all" license plate registrations on a property, in addition to the one vehicle suspected), some four weeks later that one missing piece of registration information may represent the key to breaking the case. I have learned through the twin teachers of regret and frustration that the failure to record the seemingly insignificant fact comes back to haunt the investigator.

There is no substitute for thoroughness in investigative work. During my first two years on the job, I would obtain photographic evidence in the final stage of an investigation, just before filing the state complaint in county court. With experience gained from several dozen complicated investigations in the past six years, I have come to recognize that the benefits of placing more photographic evidence in the case file far outweigh the financial cost. The Inspector should never leave the office to conduct a property inspection without his principal investigative tool, a 35 mm camera. lastly, one important piece of information and documentary evidence which should be placed in the case file routinely for cases reaching county court is a xerox copy of the defendant's property deed. This will forestall a legal maneuver often employed by a crafty, veteran defense attorney who attempts to have a pre-trial or trial continued to buy more time. Also, this will probably score valuable psychological points for the Township, because the defense attorney came totally unprepared for this "petty zoning case."

The Zoning Inspector as Investigator very early learns that Darwinian survival theories are applicable in the court room, as he must cope with the legal parlance and the nuances of court procedure. The Zoning Inspector's eyes are opened to an entirely new arena of legalese, maneuvers, and legerdemain under the rubric of a criminal trial and the science of jurisprudence: motions for dismissal for having failed to establish proper venue; motions for dismissal for having filed a flawed affidavit; having to appear and sit interminably in court while defense attorneys play the "continuation game", hoping and waiting for the Inspector not to appear, to file a motion for dismissal; suspensions of fines for "good cause"; motions for discovery of evidence to be introduced; taking the case "under advisement" by the judge; and the most dreaded phrase uttered by defense attorneys, when all else fails, that the Township's case represents a classic example of "arbitrary enforcement". The arbitrary enforcement charge is one which the Inspector as Investigator must be prepared to combat, utilizing every weapon

in the his arsenal to show that the Township regulations are being enforced vigorously and equally throughout the community. A resident defending himself or the investigator working for the defendant's attorney may produce photographs of "identical violations", of course found within the "same neighborhood". If the Inspector as Investigator has done a thorough job in preparing the case and enforcing the zoning regulations, he should be able to parry this assault of some 10-20 color photographs, most of which depict non-conforming properties or violations some two or three miles away from the subject property. Since in 90 percent of the cases brought to court most residents will not want to appear and testify as witnesses for fear of reprisals, the Inspector as Investigator will be the case Investigator, the Township's sole witness, and in some cases, the quasi-prosecutor. I believe there are three keys to being successful with zoning cases at the county court level. First, come to court prepared with a complete case file in hand, the product of a thorough investigation. Second, establish a good working relationship with the assistant prosecuting attorney(s). Third, acknowledge the "system" and the "court game" for what they are, and don't become intimidated by either: do your homework and become an winning player in the court game.

There have been a number of memorable case investigations in which I have been involved, such as the case of the "pizza lady -- she delivers". This case centered around an enterprising housewife who went into business making pizza in her family kitchen, and advertising the business by means of pamphlets disseminated to the 200 houses throughout the residential plat. Fortunately, the defendant entered a guilty plea and no motion for discovery was filed, because I found that the Township office staff had consumed the evidence shortly after I photographed one of the office secretaries picking up a pizza for lunch. In another case, known in the Township as the "legend of 'little man'", the Township was plagued for years with an older man living in an isolated setting who literally ran a junk yard and landfill business. This larger-than-life character would charge individuals $5-$25 per load to dump trash and junk on his residential property, and then burn the combustible materials, thereby engaging in a pitched battle with the Zoning Department, Fire Department, and County Board of Health. Another case dealt with a woman who was a Shaklee products distributor who attempted to cloak her business activities under the camouflage of her "nutritional consultant" yard sign. But by far the most exciting investigation was a multi-jurisdictional case involving three locations in the Township where illegal electronic poker machines were being operated. Because of a Zoning Ordinance amendment in 1984 making a new game room/amusement center business a conditionally permitted use in a business district, the zoning jurisdiction enforcement effort was tapped to augment on-going law enforcement efforts in this case. The Zoning Inspector found himself included in the strategy sessions, and accompanied the police chief, county prosector, IRS agents, 20 uniformed policemen, and other inter-department strike force officers on the night of a raid executed simultaneously at the three locations. Here the need for confidentiality put to the test the skills necessary to be an effective investigator, the most important being "keep thy mouth shut."

Lastly, the Inspector as Investigator daily finds himself placed in the middle of the conflict between the Township's right to conduct an inspection on private property, in furthering an enforcement effort, and the privacy rights of the property owner. I am certain all Zoning Inspectors in Ohio can

quote Ohio Attorney General's Opinion 73-116: "Pursuant to RC 519.16, a township zoning inspector may, for the purpose of investigating an alleged zoning violation, enter the site in question, despite objection by the owner or occupant, provided he does so at a reasonable time, presents proper identification, and conducts his inspection in a reasonable manner". After reading the majority and dissenting opinions in the 1982 Ohio Supreme Court case, Sustein v. Fee [Sustin v. Fee (1982) 69 Ohio St. 2nd 143], however, a Zoning Inspector comes away with a greater sensitivity to property owner's rights and the invasion of privacy issue. This case should be mandatory reading for all Zoning Inspectors. The case centered around a property owner having sued a Zoning Inspector, one Arthur Fee, Russell Township, Geauga County, for "tortious intrusion" of privacy, because the Zoning Inspector was conducting surveillance of the property from the street with binoculars, suspecting that a dog kennel business was being operated on residential property. A Geauga County jury awarded the property owner $5,000 compensatory damages and $4,200 punitive damages, but the Court of Appeals reversed the trial court. The case made its way to the Ohio Supreme Court, which affirmed the Appeals ruling in a 4-2 decision. Essentially, the Supreme Court decision found that "a township zoning inspector, acting within the scope of his official duties, by investigating possible zoning violations upon the advice of the county prosecutor, may not be held liable in tort for a claim of invasion of privacy in the absence of evidence that he acted in bad faith or with a corrupt motive". Notwithstanding this outcome and the 1973 OAG opinion, I believe the Zoning Inspector as Investigator must tread carefully in dealing with the issue of privacy rights and property owner's rights. In short, if the Inspector as Investigator is conducting an inspection "outside" the dwelling and is asked to get off the property by the property owner, he should immediately leave. If a return inspection is necessary, he should obtain an administrative search warrant. If the Inspector as Investigator is going to conduct an inspection "inside" the dwelling, he should always obtain an administrative search warrant. (By this time, the reader can probably guess what is at the top of my list in 1989 for new equipment purchases -- a 35 mm camera with a "zoom lens".)

The role of the Zoning Inspector as "Interpreter" is one wherein the Inspector exercises an informed judgment in arriving at a decision or determination as to the applicability of specific sections of the Zoning Ordinance, when the subject section is either vague, imprecise, or unaddressed. There are certain observations one can make concerning the writing and enforcement of any law, whether it be federal, state, or local. First, in the application of any promulgated law, there are always going to be "borderline" or "gray" areas which the black and white literal application of the text will not address. Even though the Township Trustees, Zoning Commission, and Zoning Appeals Board may make painstaking efforts to fill all voids, loopholes, and ambiguities each time the zoning ordinance is amended, there will invariably be areas, which are neglected. Secondly, many times the intended objective of an amendment is not realized or is imprecisely stated in the final text, and finally, even though great care may have been taken in constructing the exact phrasing of an amendment, two readers may upon independent readings interpret the meaning of the section differently. Consequently, the task of the Inspector as Interpreter is of no little importance in the daily enforcement of a Township's zoning ordinance. Moreover, this specific role is the one which takes the most time to become comfortable with and confident in, as the one official in Township government

given the responsibility of providing the "definitive answer" as to the proper interpretation of the zoning ordinance.

Interpretive and enforcement questions posed to the zoning office can take various forms: 1) permitted uses versus prohibited uses within a zoning district classification; 2) a specific request as to a proposed use constituting a permitted use within a district; 3) verification of existing permitted uses and district classifications relative to title transfers, mortgage applications, or remortgage actions; 4) interpretation of the "practical application" of specific district regulations, i.e., conformance of a completed construction project with the zoning permit application details; 5) borderline cases of proposed uses, such as a determination whether a business shall locate in a business or industrial district; 6) application of current district requirements for non-conforming buildings and land; and 7) the area likely to be the most controversial, what constitutes a "zoning violation". All questions of interpretation and enforcement of the zoning ordinance are first presented to the Zoning Inspector, in accordance with the statutory provisions of ORC 519, with the Board of Zoning Appeals hearing and deciding any case wherein an Appellant alleges there is error in any order, requirement, decision or determination of the Zoning Inspector (ORC 519.14(A)). Although few in number annually, this type of proceeding before the Board of Zoning Appeals is probably one of the most interesting and most instructive for all concerned -- the general public, the Board of Appeals members, the Zoning Inspector, and the Appellant -- since the Board can affirm, modify, or reverse the order or determination of the Inspector as Interpreter.

The requests for written determinations from the Zoning Inspector as Interpreter can result in either a prompt response to a simple query or a lengthy, detailed explanations requiring much research, review, and thought. For example, here are "simple" questions posed in some letters: Can a manufactured home be constructed in a Residence R-1 District, or is it excluded and confined to a Mobile Home Park District? Even though the zoning ordinance prohibits junk yards in the Township, can an individual establish a secondhand materials yard within the Township on industrial property once he obtains a salvage motor vehicle dealer's license from the state? Is the breeding and raising of dogs as an advertised business an agricultural use of property, which use cannot be affected by zoning? Absent a state law regulating noise, is a sandblasting business a permitted use in a Business B-2 District, when the Industrial District regulations list as a prohibited use any process of assembly, manufacture or treatment which produces offensive or obnoxious smoke, odor, dust or "noise"? As the reader might have guessed already, each response to the above requests for written determination required more than twenty minutes to formulate. After working in the role of Inspector as Interpreter, I developed a feel for knowing when "to consult or not to consult" in formulations, I usually seek the advise of my office assistant, fellow zoning inspectors in other communities, and off the record opinions from the assistant prosecuting attorney. In a handful of cases, I formally request an opinion from the county prosecutor. To perform competently in this capacity, much reading and study is required, with a self-confidence developing slowly but progressively. It is of paramount importance that the Inspector thoroughly understand the contents of his own zoning ordinance; and, although this should be a given presumption for someone serving in this position, it is amazing how one forgets small details and

nuances of sections seldom consulted. Furthermore, the Inspector must keep abreast of cumulative service updates of the Ohio Revised code, OAG opinions, and zoning Common Pleas Court decisions within his own county.

Most debates upon the proper interpretation of a law turn on whether one views the subject text through the prism of a "strict constructionist" versus a "loose constructionist". I strongly believe that, in the interpretation of a local zoning ordinance, especially with respect to what constitutes a zoning violation, a "strict constructionist" policy is preferred to insure the consistent, fair and impartial application of zoning regulations in a community. Although the Zoning Inspector as Interpreter is more prone to be criticized as being too "legalistic" in enforcing the ordinance as a "strict constructionist", a "loose constructionist" interpretive posture will inevitably lead the Inspector and the Township down the dangerous path of arbitrary enforcement. The Inspector as Interpreter must insist upon and maintain complete autonomy in this unique role as statutorily designated. In order to preserve the integrity of his role as Interpreter, both in the eyes of the general public and within the structure of Township government, the Inspector cannot acquiesce to political pressures. This naturally leads to what is always one of the hotly debated topics in every Township, what I like to describe as the "anatomy of a zoning violation". Complainants scream that the evidence on a residential property clearly constitutes a zoning violation, the alleged violator protests that in fact there is no violation whatsoever, and the Township Trustees "encourage" the Inspector to take another look at this property. However, the decision as to whether or not a violation actually exists rests with the Inspector as Interpreter. As one speaker once contended at a national seminar I attended, a Zoning Inspector has the right to exercise "discretion" just as a prosecutor does in determining whether or not a violation has occurred; that is, the Inspector possesses the right to "pursue" or "ignore". A good example to cite is enforcement of a provision contained in the Austintown Ordinance's Supplementary District Regulations section, dealing with the storage of miscellaneous items and materials in a residential yard. The section reads that "no abandoned, wrecked, unused, or dismantled automobiles, trucks, trailers, farm equipment, or aircraft shall be permitted to be parked, and no furniture or other miscellaneous items or materials shall remain exposed on the premises..." While making the on-site inspection of the subject property regarding such an alleged violation, the Inspector as Interpreter must make an informed judgment call whether to pursue or ignore this set of circumstances at this particular time. In so doing, the Inspector as Interpreter must balance the equities within the context of the relative circumstances, taking into account the enforcement credibility of his enforcement program, the potential harm to the individual, the potential harm to the neighborhood and the community at large, and the previous posture of the county court given the set of circumstances. Yet once the Inspector has made his determination, he must doggedly defend it, so long as the circumstances remain unchanged.

There are many complex areas which the Inspector as Interpreter must address, some brought about by changes in technology with which amendments to the zoning ordinance might not have kept pace, others by changes in federal and state laws which may supercede local jurisdiction. Some of these areas include the ascendancy of the modular home industry; the advent of home computers as they relate to home occupation regulations; changes in the advertising practices of businessmen and contractors; noise regulations or the

lack thereof in a state; congregate living quarters in conjunction with conventional nursing homes; funeral homes established within cemetery properties; truck stops as they relate to interstate commerce; business signage adjacent to interstate highways; satellite antenna dishes on residential properties, and subterranean dwellings. In summary, the Inspector as Interpreter must adopt the mantle of a quasi-lawyer, exercise sound judgment and common sense in interpreting the ordinance, and foster consistency and credibility for his office.

In addition to the four major roles of the Zoning Inspector--Administrator, Inspector, Investigator, and Interpreter, of no less importance are the ancillary roles of recordskeeper, cartographer, quasi-lawyer, quasi-psychologist, referee, planner, and public relations figure. The Inspector as "Recordkeeper" is a role demanding the Zoning Inspector to maintain records of all zoning permit applications issued; correspondence sent to residents with respect to violations; case files of county court, Common Pleas, and District Court of Appeals zoning cases; statistical records of estimated valuations of new residential, business, and industrial construction; ledgers and receipt books of monies received in the form of zoning permit fees, zone change and appeal case applications; copies for public purchase of the zoning ordinance and official zoning map; blueprints of business and industrial construction projects; the case files of zone change cases and appeals cases from 1948 to the present. Most importantly, since the Zoning Inspector sits as Clerk on the Zoning Commission and Board of Appeals. He must record the minutes of the public hearings, recording the official action taken on each case in the form of a roll call vote. The Inspector as Recordskeeper is also called upon to provide certified copies of Zoning Office records, including complete transcripts of cases filed in Common Pleas courts.

As "Cartograher" the Inspector provides accurate descriptions of parcels of property which may be the subject of written determinations, certifications of zoning district classifications, zone change and appeals case preparatory information for board members, illustrations for special presentations, and requests for copies of county tax map information. I have found that map exhibits attached to letters of request for information are extremely helpful, particularly for those who are out of state or unfamiliar with the Township. This role I jokingly refer to as my "office therapy", an avenue to release stress.

The Inspector as "Quasi-Lawyer" is a role which was touched upon somewhat in the discussion of two previous roles, that of Investigator and Interpreter. However, this role is formally assumed when the Zoning Inspector represents the Township in zoning cases which are heard in court. The Zoning Inspector must work closely with the County Prosecutor's Office or private Township counsel, compiling the transcript and case file, taking photographic evidence and preparing exhibits, reviewing the case files and designation of witnesses, and testifying and assisting the attorneys in the court trial. In 1988, Austintown Township witnessed an unprecedented number of zoning cases at some stage of litigation -- filing, pre-trial, trial, judgment rendered or injunction ordered. There were eight cases in the Common Pleas Court, two in the 7th District Court of Appeals, one in the United States District Court, and fifteen cases filed by the Inspector at the county court level. The role of the Inspector as Quasi-Lawyer is an active one.

The Inspector as "Quasi-Psychologist" must learn how to read, approach, and react to people and situations that confront him daily. Different situations demand different approaches: sometimes merely encouraging cooperation with the Township and compliance is sufficient, other times firmly demanding compliance with an order is required. An Inspector conducting an on-site inspection on a residential property cannot effectively deal with an irate violator threatening physical violence and using profanities by simply tip-toeing off the property to return another day. There are times to use the King's English, and there are times to match profanity with profanity, so long as the Inspector as a symbol of Township authority remains in control of the situation and accomplished his objective. Of course, storming onto a violator's property and flaunting authority as an Inspector will likely lead to an immediate confrontation, which will set the tone for subsequent confrontational visits. Although the non-confrontational approach is the best policy, there are occasions when it is advisable to have a police officer accompany the Inspector, or at least be visible from the street.

The Inspector as "Referee" is unfortunately an unavoidable role. However, the Inspector can minimize the number of "Hatfield and McCoy" disputes in which he gets embroiled. The classic cases always center around the boundary line disputes, with the feuders refusing the zoning office's advise to seek the assistance of a private surveyor and demanding as a public service that the Zoning Inspector come out and just "look at" the situation. Another category of neighborhood dispute is the emotionally-charged water problem issue, with the Inspector as Referee attempting to keep both property owners in neutral corners before the attorneys, engineers, and surveyors, enter their civil dispute. Throughout the course of neighborhood disputes, the Inspector as Referee must perform what resembles a high wire act, reiterating to the parties involved that the Township is merely a neutral observer in their neighborhood war. Additionally, the Inspector as Referee attempts to keep the powder keg from exploding in a situation where one violator has antagonized the troops in a neighborhood as a result of his violation.

The Inspector as "Planner" is a role which the Zoning Office wins by default in an unincorporated Township. Given the fact that the Zoning Office has such close contacts with state, regional, and county planning agencies and departments, this function is expected to be fulfilled and is usually expanded by the Board of Trustees. One of the principal undertakings of the Inspector as Planner is the coordination of areas of amendment to the zoning ordinance. The Inspector is keenly attuned to this subject, given his unique vantage point of daily enforcing the provisions of the existing ordinance. He should keep an on-going critique of points of ambiguity in specific sections, additional definitions needed to facilitate interpretation, modifications of sections which are antiquated due to changes in state zoning law, and proposed new sections to come to grips with new problem areas.

The Inspector as "Public Relations Figure" is a role the Zoning Inspector fulfills daily as the chief liaison between the Township and land developers, attorneys, realtors, engineers, architects, bankers, surveyors, public officials, appraisers, residents, businessmen, contractors, media, and school district officials. There is a more formal role the Inspector plays when he speaks to the local Rotary, Kiwanis, Optimists, and Lions clubs, conducts a

workshop for a county agency or department, or participates in a program at a university. Once again, the Inspector not only represents the Zoning Department, also the Township.

The intent of this article was to deepen the reader's appreciation for the difficult profession of the Township Zoning Inspector, by providing an insider's perspective of the job. The job is truly unique in demanding attention to so many diverse areas of responsibility. The Inspector has to exercise the wisdom of Solomon, sustain the patience of Job, and possess the instincts of Detective Columbo. He must demonstrate organizational and administrative skills, uphold an indefatigably positive attitude, and display sound, tempered judgment. He must balance the maintaining of his sanity with the overall objective of providing a public service and safeguarding the public trust. Like the circus performer frantically attempting to keep all twelve plates spinning simultaneously on their poles, the Inspector must allocate his time and target his focus. He is indeed a "Jack of all Trades."

HOW TO CONDUCT A PUBLIC HEARING

By Robert C. Schroeder [1]

Public hearings are an essential element in the zoning process. They are required by statute in all cases involving zoning amendments, conditional uses, appeals and variances. Clearly, they provide an avenue for citizen input that allows all interested persons and agencies to be heard. They should not, however, place the hearing body in a position to be persuaded by mob rule. Public hearings should be orderly and fair to both the proponents and the opponents, insuring an open and objective atmosphere.

In order to attain that goal, the public hearing should be structured and that structure explained to the participants before the hearing begins.

Hearing Format. In order to insure a fair and objective public hearing, the following format is suggested:

- Open the Hearing. The chairperson opens the hearing, summarizes the hearing procedure, announces the subject, and summarizes the application. At this time, recognition of required public notice publication should be made for the record.

- Call for Abstentions. The chairperson calls for abstentions by any decision-making official who has had prior contact regarding the proposal or has an interest in the application. This is important in order to maintain public confidence in the hearing body and its decision.

- Staff Report and Summary. The staff presents its report. Visual aids in the form of flip charts, transparencies and maps should be employed in the presentation to make or clarify critical points.

- Oath of Witnesses. At some point in time, the procedures of a public hearing and the decision based thereon may be tested in court. While the swearing of witnesses may not be mandatory in all cases, courts have found that, where sworn testimony was taken, the proceedings of the hearing were enhanced. In order to conserve time, it is suggested that all persons wishing to present testimony stand and be sworn at one time. Then, as each persons steps forward to present testimony, the chairperson need only ask if that person was sworn in and procede to receive testimony.

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[1] Mr. Schroeder is the Executive Director of the Greene County Regional Planning and Coordinating Commission. He is a regular contributor to the State-sponsored Land Use Planning Course offered annually in memory of Jennifer McSweeney.

- Proponents are Recognized. The applicant and those favoring the proposal are generally heard first. A reasonable but not excessive time should be given to each individual. Depending on the number of persons to testify, three to five minutes each should be ample.

- Examination of Proponents through the Chair. All questions regarding the proponents' presentations should be directed through the chair. This minimizes the opportunity for argument.

- Opponents are Recognized. Those opposed are heard next. Individuals who were entitled to receive notice of the hearing or groups represented by spokespersons should proceed first. This, again, should minimize time requirements and redundancy. The same amount of time allowed each proponent should be afforded each opponent.

- Examination of Opponents through the Chair.

- Rebuttal. Both opponents and proponents may submit rebuttal testimony. It is important to keep all questioning and rebuttals directed through the chair. The proponents should have the final opportunity for rebuttal.

- Close the Hearing. Upon motion, the chairperson should close the hearing, or, if the hour is late and pertinent data needs to be obtained, announce a continuation of the hearing to another specified date, time and place.

- Deliberation and Decision. At the conclusion of the hearing, the decision-making body should deliberate upon the application and reach a decision. If time does not permit adequate deliberation, the matter should be continued for a decision to a specified date, time and place. It should be kept in mind that all meetings and deliberations of the hearing board are subject to applicable "Sunshine Laws".

  In weighing the facts presented in a case, it is important that the board focus their discussion on specific reasons for approval or disapproval within the scope of their authority. As one publication puts it, "vote reasons, not opinions".

Hearing Record. At some point in time, the decision of a board will be tested in a court of law. Generally, that challenge will be based on the records of the proceedings. The point, then, that a hearing record is necessary is indisputable; the question is how such a record should be made. The most complete record can be obtained by using a court stenographer. This is, however, very costly. Many communities have adopted the practice of tape recording each meeting. This method is low in cost and is usually satisfactory when accompanied with a transcript, in the case of a controversial decision, or with a brief written summary of the public hearing comments in the case of a more routine matter. It is essential that speakers identify themselves, and note that they have been sworn, in order to determine who said what at a later time. Of lesser value are the extensive notes taken by a secretary or clerk of the hearing body.

A complete record of the hearing will typically contain the following:

- The applicant's request on a properly completed form.
- The records of any actions on this request by an administrative official or body, including all past records regarding the property such as an earlier request for variance, conditional use approval, or a record of nonconforming use status.
- Records that verify due notice has been given to the appropriate parties and to neighboring property owners. Any newspaper notice and the affidavit of publishing thereof should also be retained.
- Any relevant maps, drawings, or photographs presented as evidence, or as a part of the application, and copies of any correspondence received or sent out with regard to this request.
- A complete record of all public input made at the hearing. Testimony should be submitted by sworn witnesses.
- A record of what the hearing body saw on any visit it made to the property in question, and a summary of any conversations between the hearing body and parties with an interest in the application.
- Copy of a reference to relevant resolution or ordinance requirements.
- The findings of fact, the conclusions reached, and the recommendation or decision made on the request by the hearing body.
- A copy of any other correspondence to or from the petitioner regarding the decision.

The crucial elements of this record are the findings, conclusions, and decision (or recommendation) of the hearing body.

The Decision. The decision must be in writing and include all conditions that may be associated with the decision. The decision or recommendation should not be a mere conclusion or a statement. Each decision should be accompanied by specific findings of fact related to the specific standards stated in the zoning regulations which the applicant must satisfy. It is not sufficient, for example, to have a hearing body simply state the general statutory requirements such as "the amendment is in agreement with the comprehensive plan" or "practical difficulty or unnecessary hardship exists" -- these are not findings, they are conclusions. The facts which led the hearing body to reach this conclusion must be identified to support the conclusion reached. The decisions run the chance of having to stand up in the Court of Common Pleas where detailed findings of fact must be presented and the conclusions of law, based upon those facts, must follow. It is important that careful consideration be given to all matters. Clear and uniform hearing procedures will assist a hearing body in properly carrying out its responsibilities. On occasion, however, such as the adoption of rules of procedure, the assistance of the community's Legal Counsel is needed and should be sought.

YOUR ZONING PROVISIONS FOR HOUSING THE ELDERLY MAY BE OUT OF DATE

(Reprinted with the permission of Charles Reed from The Zoning Report, Vol. 5, Nos. 10 & 11, Margate, Florida, 1987)

NOTE: The italics are the author's.

PART I

A dramatic change has occurred in the market for housing for the elderly. In the past ten years it has switched rapidly from a modest federally subsidized market for low- and moderate-income elderly to a much larger and robust privately financed market for middle-income newly retired elderly.

Only about half the zoning codes in the U.S. recognize this change. Most of the remaining zoning codes regulate housing for the elderly only through a reduction in the number of required off-street parking spaces. The intent is to recognize that low- and moderate-income elderly own less cars per household than the general population. The provision also reduces costs to non-profit organizations that sponsor such housing projects.

Housing for the elderly has probably become the fastest growing market in the housing industry. Why? For these four reasons: rapid growth of the elderly population, private pensions and Social Security, Medicare, and government middle-income housing finance programs.

The elderly are the fastest growing segment of the nation's population. Younger people are living to retirement age and more retirees are living longer. This is due to sufficient family income and the advent of group health insurance over the past 40-50 years to alleviate health problems, improving medical practice, and conformance of industrial design and community development to increasing standards of public health and safety.

Most company pension programs in the U.S. and the national Social Security program were started around World War II--in the 1930's and 40's. At that time, many of today's new retirees were entering the labor force and starting to pay into company pension programs. These workers have become the first wave of retirees with a meaningful personal income. They are able to support a middle-class lifestyle in retirement, to purchase retirement housing as a mass market.

Medicare allows these new retirees to enjoy good health, lead an active leisure-oriented lifestyle, and live longer. For most retirees, Medicare protects their income from costly medical expenses; and income stability allows them to make major commitments to purchase retirement housing.

The HHFA, FHA and FNMA mortgage insurance and housing finance programs started in the 1940's and 1950's contributed to a large increase in home ownership in the U.S. This has resulted in substantial equity build-up by workers over the past several decades while they were building their pensions and social security benefits. Upon retirement, these workers are converting this equity to purchase retirement housing.

We take two issues of the Zoning Report to discuss this topic. In this issue, Part One of two parts, we discuss how to update your zoning code to recognize these changes in the market for housing for the elderly. In our September 25th issue, Part Two, we provide sample quoted text from zoning codes that illustrate our suggestions and ideas from Part One.

Also see past issues of "The Zoning Report" for discussion of other elderly zoning topics. We discuss the definition of family, for housing unrelated roomers in our September 26, 1983 issue: "How to redefine and use the word "family" in your zoning ordinance". Nursing homes, convalescent centers and homes for the aged are discussed in our June 21, 1985, issue: "Updating your zoning ordinance for nursing homes". We touch upon the needs of elderly persons in four other issues: for group homes in our December 21, 1984, and January 11, 1985, issues: "How to define family group care homes in single family zones"; and for elderly adult day care in our June 20 and July 18, 1986, issues: "Zoning for child day care in residential zones".

Restructuring your zoning regulations for housing for the elderly.

Define these two terms: "elderly," and "housing for the elderly" or "retirement home." You define these terms to assure that development applications for zoning permits to build elderly housing projects actually become projects for the elderly.

Define the word "elderly" to include all types of uses that cater to elderly needs in addition to housing for the elderly. These include nursing homes, convalescent centers, homes for the aged, accessory apartments in single-family houses and echo housing (temporary mobile-home-type units located in rear yards of single-family dwellings).

Set forth an actual minimum age in your definition of elderly. Case law has held that you can pick a specific "cut-off" age, so long as it relates to being elderly. We suggest you tie your chosen age limit to ages set by other major programs that relate to elderly persons. The Social Security minimum retirement age is 62, so most codes use this age -- although ages in zoning codes range from 50 to 65. Ages between 50 and 62 define a household as elderly if one person in it is disabled.

The entire household is defined as being elderly if only one person in it meets your age requirement for being elderly. The husband has been the major breadwinner who earned the primary pension for his family. He retires and subjects his family to major changes in income and lifestyle. Thereby, the family or household is deemed to be elderly if one person in it is elderly.

Once a household qualifies as elderly, it always is elderly. Often, an elderly spouse in a household dies, leaving a non-elderly spouse. This spouse is usually a widow with reduced income from a survivor's pension. Unless you qualify that household as always being elderly, it would be forced out of the housing unit by your zoning code.

You can limit the size of elderly households to two to three persons in retirement projects. Households larger than this crowd the small dwelling units specially designed for elderly. These are never more than two-bedroom units, catering to a mass market overwhelmingly less than three person per household. We suggest three persons, to allow a live-in nursing aide to assist an elderly couple.

Don't restrict household composition to immediate family members. Surviving spouses commonly later double up with non-related spouses, often of the opposite sex. This provides needed companionship and allows them to share two pensions and Social Security benefits. Household composition may be of concern to housing sponsors and owners, not the zoning code. The household still meets the intent of your elderly housing regulations without further regulating its composition.

Define "housing for the elderly" to include any definition of "retirement home." Most zoning codes don't differentiate these two terms--defining one or the other.

"Housing for the elderly" must be occupied by "elderly" persons as you define "elderly." This linkage shuts off applications purporting to be housing for the elderly projects that later can be converted to general occupancy as a conventional multi-family project.

Qualify the dwelling units for elderly housing as being designed to function as living quarters for elderly persons. State and local housing and building codes commonly require special design of the interior of elderly dwelling units to meet the special living needs of elderly persons. If you also list these standards in your zoning code, you provide jurisdiction to your zoning and building officials to assure that the project remains an elderly project.

Describe what the premises may contain in your definition of housing for the elderly. Many ancillary and accessory uses are vital to the concept of successful retirement living styles. Most typically, these uses and activities include meals served in a common dining room, an infirmary and limited medical emergency facilities and centralized recreational facilities. Limited convenience retail and service uses are allowed on the premises if not readily accessible off the site to elderly occupants.

Retirement housing excludes nursing homes, convalescent homes, homes for the aged, group homes and other uses that treat elderly persons for special problems unrelated to their basic dwelling needs. The term "elderly" includes all these other uses, but "housing for the elderly" is a sub-class of "elderly" and excludes non-dwelling elderly uses.

The definition also excludes rooming and boarding houses, which, in many parts of communities, are occupied almost exclusively by elderly persons as retirement housing.

"Housing for the elderly" excludes accessory apartments in single-family dwellings and echo housing. Conversely, in your definition of these two terms, exclude them, for zoning purposes, from being considered as elderly housing.

Select those zone districts most appropriate for housing for the elderly in your zoning code. In most zoning codes, elderly projects are allowed in multi-family zones as a conditional or exceptional use.

But the trend is to allow retirement housing in any residential zone as an exceptional or conditional use. In single-family and two-family zones, use conditions seek to be compatible with surrounding single-family dwellings.

It makes an excellent transitional use. Many zoning codes allow retirement housing in office-commercial transitional zones, to be located at the edge of single-family zones.

As a conditional or exceptional use for retirement housing, applicants must submit a site plan, narrative and covenants with the application. These materials describe how the project meets your zoning conditions or exceptions for elderly housing and {will} be maintained as an elderly project after it is built.

Some codes allow elderly housing as an overlay or combining zone over specifically listed residential (usually multi-family) zones. Qualifications are similar to those for elderly housing allowable as a conditional use. But, as an overlay zone, elderly projects appear on your official zone map. When a project covers more than one underlying zone, it takes a pro-rata average of the densities of the two zones. Projects overlaying non-residential zones take a multi-family density that you specify in your elderly overlay zone.

Zoning codes rarely allow retirement housing as a separate zone district. It can be allowed as a PUD district or as a use in your overall PUD zone.

Zoning standards for retirement housing

There are four groups of zoning standards for retirement housing: locational standards for projects; site standards; zoning bulk standards; and guarantees of performance.

Locational standards for retirement housing projects assure that convenient, commercial and medical uses are readily accessible to elderly occupants. These are either off-site or on-site.

Some communities require retirement housing projects to be located on an arterial street or have direct access to an arterial very close by.

Off-site commercial and medical conveniences must be within the ability of elderly persons to reach them easily by one of three ways: by walking safely to them, by readily available public transit or by shuttle bus provided by project owners.

Convenient walking distance is a maximum of two blocks from the entrance to the project, on reasonably level snow- and ice-free sidewalks for daily/weekly shopping, medical, banking, postal and worship activities. Convenience by public transit has two requirements: a transit stop -- or bus shelter (provided by project owners?) -- at a main entrance to the project (or access by a shuttle bus provided by project owners); and frequent daily scheduled transit service within a short (5-10 minutes) safe ride to commercial conveniences. Access by shuttle bus is provided by many retirement projects once or twice a day. Often the shuttle will take occupants to commercial services and shopping centers and return to pick them up an hour or two later.

On-site commercial and medical conveniences might be allowed if off-site facilities are not reasonably accessible. Restrict them "to exclusive use of the residents only," centrally located inside retirement homes or near the recreational center of larger complexes.

Site standards include off-street parking, standards for dwelling units for the elderly, ancillary and accessory uses, common open space and on-site security.

Require a parking ratio for elderly dwellings in your zoning code. Only about 25-30% of communities impose such a ratio. The most common ratio is one space for every two elderly dwelling units. Ratios vary from two spaces for every three dwelling units to one space for every four or five units.

We suggest a ratio of one space for each elderly dwelling unit. This ratio assures that sufficient spaces area available in retirement projects for middle-income elderly, their guests and project employees. Elderly projects in outlying fringe areas or for more affluent communities might provide 1.5 spaces per unit. Many elderly in these projects have one each for each spouse and need ample guest parking.

Your zoning code must also allow a special reduction in the number of parking spaces for certain situations, approved by your CPC or BZA. The reduction is allowed for projects restricted to low- and moderate-income persons or which are accessible in inner-city areas well served by transit and commercial services.

Some zoning codes that allow parking space reductions require sufficient site area to be set aside to provide additional spaces if the project is converted to a non-elderly project.

Standards that restrict dwelling units to elderly occupancy are imposed on elderly housing projects by zoning codes.

A minimum size of dwelling unit smaller than that required for non-elderly units is specified, typically about 400-600 ft for efficiency units; 500-800 sq. ft., one-bedroom units; and 600-900 sq. ft., two-bedroom units--subject to minimum sizes required by your local/state housing code.

Typical interior standards require emergency signals in each apartment to a 24-hour manned location, wide doorways, bath facilities designed to accommodate wheelchairs, grab bars in showers, tubs and near toilets, lever type door handles and water faucets, electrical receptacles to be at least 24" above floor level, no stairs within apartments, and elevator access for more than one-story dwelling buildings. Ancillary and accessory uses on the project site allowable by your retirement housing regulations include at least a common dining room, centralized recreational facilities and a small infirmary and limited medical first-aid treatment rooms. Some codes allow limited commercial convenience uses on the site if these are not reasonably available off-site and if your community's need for elderly housing is particularly strong.

Common dining areas for cafeteria or table service are provided by all retirement projects. Occupants are required or encouraged to take at least one meal a day in the dining room. Many occupants prefer this, rather than cook meals each day. The project sponsor prefers this as an informal check that occupants are "OK" and need no medical attention, with the occupants meeting and interacting with other occupants to further a social sense of community. Housing fees for the dwelling often include the cost of one or more meals per day served in the common dining room.

Centralized recreational facilities include rooms for social events, meetings and exercise, and outdoor recreational facilities -- swimming pools, tennis courts, shuffleboard, barbecues, walking and bicycling paths, and golf courses. Some zoning codes require at least a swimming pool and indoor recreational facilities, and encourage other recreational facilities to be provided by the development

An infirmary and medical examination/first-aid treatment room is allowed on the site as an accessory use. It is secondary and incidental to the housing function of the project. It allows limited medical attention to be provided for the minor illnesses and medical problems that afflict the elderly, that can be handled on-site.

Common open space must be provided on the project site appropriate to project dwelling density and housing type. Common open space excludes parking areas, driveways and roads, service areas and the swimming-clubhouse complex. Most zoning codes usually require that common open space in retirement projects be sufficient without specifying a ratio. Perhaps 30-40% of zoning codes require common open space on a per-dwelling-unit ratio. The range of ratios is about that of conventional multi-family projects, 500-2000 sq. ft. per unit, so that at least about half the site is common open space.

On-site security is required by many zoning codes. The site must be fenced and have emergency signals within each dwelling unit. Project security might also limit access to dwelling buildings by buzzer to each apartment or by a building entrance doorman, and might have security at the entrances to the project provided by a gatehouse checkpoint or magnetic-card draw gate.

Dimensional zoning standards include a minimum size of site, ranging from none to forty acres. Inner-area projects in built-up communities and higher density projects range from none to 2-3 acres. Suburban and lower density projects range from 5 to 40 acres.

Lot area per dwelling typically ranges from 300 sq. ft. per dwelling for infill high density projects to 4000 sq. ft. of lot area per dwelling for suburban oriented projects. This ratio is used along with dwelling unit density to put a cap on total project density.

Dwelling unit density ratios for elderly projects allow about 10 to 20% more dwellings per acre than conventional multi-family housing. The rationale is that elderly persons generate less automobile trips and slightly lesser amounts of water, sewage and solid waste than the general population at the same density and have no impact on schools. Large retirement villages have little impact on parks since these projects provide much of their own recreation. (But elderly persons in smaller high density projects may use nearby parks, community centers and health centers more than the general population, per capita.)

Some communities use a count of bedrooms per acre rather than dwelling units per care. Population per acre can be twice or more that assumed for an expected dwelling-unit density on the site, if all dwellings are efficiency (zero bedrooms) and one-bedroom units.

Zoning bulk standards include perimeter yards and setbacks, spacing between buildings, height of buildings and maximum lot coverage for buildings and impervious surfaces.

Perimeter yards and buffers for retirement projects are those required for general multi-family housing in multi-family zones. Projects might take an additional buffer width of 10 - 100 feet, with 25 - 50 feet typical, within or abutting single-family zones. Landscaped screening may also be required to block or obscure views of buildings in the project -- especially if the project is higher density conditional use located in a lower-density zone.

Spacing between buildings in a multi-building retirement complex usually is that required for all building groups in the zoning code. However, a few zoning codes have special rules for building spacing for retirement housing. Unless building and life safety codes for occupancies by infirm and non-ambulatory persons in a building specify other standards, you general rules for building spacing should be sufficient. If you have no special spacing rules, perhaps your yard standards would apply to each building, with front yards applying to all building walls with entrances to multi-family buildings.

Typical spacing standards are twice the height of the taller building between two buildings, or the height of both buildings added together as the distance between the two buildings.

Height of buildings within retirement projects takes the height of dwelling buildings of the predominant housing type allowed in a zone. But keep in mind that the no-stairs standard for retirement dwellings requires buildings to be either one story in height or 3-5 stories to optimize the economics of hydraulic passenger elevators.

Lot coverage by buildings and by impervious hard surfaces is that of the underlying zone. If the retirement project is a higher-density conditional use in a single-family zone, the project might take the coverage regulations of the most restrictive zone whose by-right housing includes the dwelling density of the project.

Limit storm drainage runoff for higher-density projects in low-density zones to runoff allowed for low-density zones. Sufficient storm surcharge retention is required since lot coverage for retirement projects is higher than single-family uses. This is provided by a retention pond, approved by your public works engineer.

Performance guarantees assure that the project is restricted to occupancy by elderly households. About two-thirds of zoning codes require these guarantees. Other zoning codes implicitly guarantee conditions imposed on elderly projects approved as conditional uses.

The guarantees are covenants filed with the project application. The covenants stipulate that, if the project converts from elderly housing to general occupancy, it will conform to the most applicable zoning requirements for multi-family usage. Parking spaces eliminated in an approved reduction in parking for the elderly must be restored.

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PART II

This issue, Part Two, provides you with quoted sample text selected from zoning codes that illustrate our commentary in Part One.

Sample text

The sample text is divided into five parts: (1), definitions of elderly and housing for the elderly; (2), compatibility and locational criteria; (3), standards for retirement housing; (4), create an accessory elderly dwelling unit in an existing single-family dwelling; and (5), performance guarantees to assure that a project proposed is housing for the elderly.

We underline quoted material to highlight and locate key topics within the body of the text.

Select, edit and shift the parts of those text samples best meeting your needs. Rewrite them, add your own written text, revise other sections of your zoning code to fit your specific situation. Review your final draft and related code changes with your legal counsel.

Check other state and federal codes, agency regulations, standards and guidelines, and any local or county health code that regulate housing for the elderly and for the handicapped before you write any specific standards into your elderly housing zoning regulations.

Non-zoning regulations may specify minimum size of dwellings (by number of bedrooms) to be occupied as elderly housing, the interior design of these dwelling units for safety and living needs for elderly persons, and accessory and ancillary on-site facilities that your zoning provision for elderly housing should allow.

Check also with your regional planning agency or COG, who may have a staff expert on elderly problems or a coordinator of regional programs for dial-a-ride, transit and bus services for the elderly, and "meals on wheels" types of programs. The coordinator might know of planning regulations for elderly housing or put you in contact with appropriate experts.

Definitions of elderly and housing for the elderly

"ELDERLY: Persons 62 years of age or older."
(Westport CT)

"HOUSING FOR THE ELDERLY. Housing for the elderly shall mean any dwelling in which each occupied dwelling unit is occupied by at least one person of 55 years of age or more."
(Lincoln NE)

"RETIREMENT HOME: Facility providing living quarters, either owned or rented, to persons 62 years of age or older. Such facility may be a single structure or a group of structures, and may include limited medical, recreational, and commercial services if such services are limited to the residents and their guests. This type of facility should be developed as a planned unit development
"RESIDENCE HOME FOR THE AGED: A facility for the care of 5 or more persons suffering from infirmities of age or illness where care is provided on a prolonged or permanent basis." (Jackson Co, Medford OR)
"ELDERLY OR HANDICAPPED PERSONS.
"(a) Persons who are 62 years of age or over.
"(b) Families where either the husband or wife is 62 years of age or older.
"(c) Handicapped persons under 62 if determined to have physical impairments which (1) are expected to be of long continued and indefinite duration, (2) substantially impede the ability to live independently and (3) are of such a nature that the ability to live independently could be improved by more suitable housing conditions.

"HOUSING FOR THE ELDERLY OR HANDICAPPED. A building or buildings containing dwellings and related facilities, such as dining, recreational services or therapy areas, where the occupancy of the dwellings is restricted to elderly or handicapped persons as defined herein. Such use may include facilities for independent or semi-independent living, day care, personal care nursing facilities or services to the elderly of the community when it is an ancillary part of one of the above operations. Any combination of the foregoing uses may be allowed and still be considered as qualifying under this definition."
(Montgomery Co, Silver Spring MD)

"AGED. Any person who is eligible because of age to receive old age benefits under Title II of the Social Security Act, any amendments thereto, or any corresponding successor act.

"ELDERLY HOUSING. A dwelling especially designed for use and occupancy of persons who are aged or handicapped within the meaning of Section 202 of the Housing Act of 1959, Section 102(5) of the Development Disabilities Services and Facilities Construction Amendments of 1970 or Section 223 of the Social Security Act."
(draft zoning code, 3/16/83, Iowa City IA)

"DWELLING, ADULT CONGREGATE LIVING FACILITY. Any building, residence boarding house, or other place, whether operated for profit or not, which provides "personal services" for 4 or more adults, not related to the owner or operator by blood or marriage and licensed as such by the State. "Personal services", for the purposes of this definition, means services in addition to housing and food service which include, but are not limited to personal assistance with bathing, dressing, ambulation, housekeeping, supervision, emotional security, and any other related service. Personal service does not include medical services.

Such facilities shall contain only congregate kitchen, dining and living areas with separate sleeping rooms. Should the facility be designed as multiple dwelling or residence units, it shall be restricted to the same density as allowed a retirement home."

"DWELLING, RETIREMENT HOME. A home constituting a place of residence which contains common, centralized eating facilities, and in which residency units, as used in connection with the above use, are intended to mean individual rooms or quarters occupied by one or two persons with or without individual cooking facilities. For purposes of determining maximum height, maximum lot coverage by structure, and minimum open green space and recreational area, the terms residency unit and dwelling unit shall be synonymous."
(St. Petersburg FL)

"HOUSING FOR ELDERLY PERSONS. As intended for apartment buildings for elderly, a residential building or buildings, each building containing 20 or more dwelling units specially designed for the use and occupancy of any person, married or single, who is 60 years of age or over. Such buildings shall not contain equipment for surgical care or for the treatment of disease or injury, other than for emergency first-aid care. Said buildings are permitted at a higher density than other multi-family dwellings due to a smaller required parking ratio."
(Arvada CO)

Compatibility and locational criteria for elderly housing project

(Equivalent zoning impact):
"The impact of the (Senior Citizen Housing Overlay Zone District Special) use will be substantially equivalent to those impacts within the underlying classification of the zoning plot, with considerations being given to the type of the living units, number of living units, the probable number of residents and the demand on public facilities and services generated.

(Neighborhood compatibility):

"The location, size, design, and operating characteristics of the use will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impacts of the use.

"The location, design, and site planning of the use will provide a convenient and functional living, working, shopping, or civic environment, and will be attractive as the nature of the use and its location and setting warrant.

"The use will enhance the successful operation of the surrounding area in its basic community function, or will provide an essential service to the community or region.

(Project to meet needs of elderly persons):

"Housing shall be specifically designed for the elderly and include facilities generally associated with the needs and interests of aged persons. Such facilities shall include common meeting and recreation facilities, secure parking areas, safety bars and rails in units, emergency signal system, adequate lighting for security, ramps and other provisions required for elderly persons by state law or federal regulation. In addition such facilities may include central dining facilities, laundry rooms, other convenience facilities for occupants, meeting and activity facilities for use by senior citizens from the surrounding community, and other facilities for the convenience of the senior residents.

(Off-site access to commercial conveniences):

"The use will be so located as to provide residents easy access to community services such as transportation, shopping, and other daily services. Where appropriate, there should also be provided a generous amount of activity facilities (both indoors and outdoors) for residents."
(San Mateo CA)

Standards for retirement housing.

"Housing and related facilities for elderly or handicapped persons.

"(a) In any zone where authorized housing and related facilities for elderly or handicapped persons may be permitted upon a finding by the (zoning) board (of appeals) that:

"(1) The proposed use will not produce adverse effects on the use or development of the surrounding area because of noise, traffic, type of physical activity, or any other reason.

"(2) The site has adequate accessibility to public transportation, medical services, shopping areas, recreational and other community services frequently desired by elderly and handicapped persons.

"(3) The site is reasonably well protected from excessive noise, air pollution, and other harmful physical influences.

"(b) The following development standards shall apply:

"(1) Minimum area of lot shall be one and one-half acres, except in areas in close proximity to central business districts and transition development areas where an adopted and approved sector plan designates sites for such housing; provided that in no case shall the minimum lot area be less than that specified in the zone in which the land is classified.

"(2) Minimum setbacks and lot coverage shall be as specified for the zone.

"(3) The Board may permit a greater height than specified in the zone provided that the height in a one-family zone shall not exceed 50 ft., unless an additional setback of one ft. is provided for each additional foot of height above 50 ft.
"(4) Minimum off-street parking shall be one space for each 4 dwelling units.
"(5) Maximum density shall be as follows:
"a. One residential unit per 3000 sq. ft. of net lot area in the Rural Zone.
"b. One residential unit per 1500 sq. ft. of net lot area in (estate, 1/4 ac to 1 ac) Zones.
"c. One residential unit per 750 sq. ft. of net lot area in the R-90, R-60 and R-40 (9,000 sq. ft. to 6,000 sq. ft./du) Zones.
"d. Three times the number of units normally permitted to the R-T, R-30, R-20, and R-H (medium and high-density) Zones.
"(6) Ancillary facilities, such as dining rooms, workshops, and retail stores serving exclusively the occupants of the building may be included if loading areas serving these facilities are not visible from any property line and if there is no exterior announcement or other evidence of retail facilities.

"(c) In the application a vicinity map shall be provided showing major thoroughfares, current zone boundaries, public transportation routes and stops, and the location of commercial, medical, and public services within one mile of the proposed housing."
(Montgomery Co., Silver Spring MD)

(Special design of dwelling units):

". . . housing (for the elderly) shall include the following:
"(a) non-skid bathtubs.
"(b) electrical outlets at levels at least 24 inches above the floor.
"(c) grab bars around bathtubs and showers.
"(d) lever type faucets and door handles.
"(e) at least one emergency signal in each unit which is audible and visible at a central location.
"(f) all buildings over one story shall contain an elevator for the tenants.

(Rooms required and size of dwelling units):

". . . All dwelling units shall consist of at least a living room, bedroom, kitchen, and private bath and toilet and each unit shall contain not less than 525 sq. ft. for a one bedroom unit and 750 sq. ft. for a two bedroom unit except that not more than 25% of the units may be of an efficiency type of not less than 425 sq. ft. The floor area shall be measured from the interior faces of all walls. This requirement of unit sizes for housing for the elderly has been established to reflect the economy as well as efficiency recognizing the absence of children, the lack of need for large entertaining areas within units, and the provisions of common areas located within the project.

"Parking shall be established at the rate of not less than one space for each unit of housing for the elderly. The City Council may permit reduction of parking spaces provided in a landscaped parking bank which will allow the conversion of landscaped areas into additional parking at the request of the Planning Department. Such landscaped parking banks shall not be computed in minimum landscape requirements. (Size of parking space for elderly) All required parking shall be 10 ft. in width, center to center, and 20 ft. in length with a minimum aisle width of 22 ft."
(Southfield MI)

(Parking ratio for elderly housing in parking ratio list in parking chapter): "One for each two units, and one for each employee. Should units revert to general occupancy, then two spaces per unit shall be provided."
(Portage MI)

(Reserving land for reduced number of parking spaces): ". . . the BZA may reduce the number of parking spaces per unit normally required for such unit or units by as much as 1 space per unit (ed. note: 1-1/2 spaces required per multi-family unit); provided, however, that there shall be permanently reserved on the lot whereon said unit or units are located, an area of undeveloped land sufficient in size and location to allow future construction of all parking spaces, the construction of which has been exempted by such special exception, together with sufficient area for ingress and egress therefrom. Parking spaces, together with ingress and egress, shall be constructed within the area so reserved in the following events.

"(1) All parking necessary to bring a unit into full compliance with the standards generally applicable to non-elderly housing must be constructed before such unit may be used either temporarily or permanently as housing for non-elderly persons, or families . . .

"(If reduced parking is inadequate): (2) If the BZA shall at any time after granting a special exception as to a unit or units, determine pursuant to application to the city manager, resident or residents of the elderly housing project that the reduced number of parking spaces are inadequate to properly serve the residents of such unit or units, then the BZA may amend or revoke such exception so as to require construction of some or all of the additional parking which would normally be required under this chapter.

(Rationale to reduce parking spaces):
". . . the BZA shall determine to its satisfaction: . . . that in view of the location of the proposed apartments, the availability of public transportation thereto, their placement in relation to shopping areas providing for the common daily needs of its occupants, the mix of units for general occupancy as opposed to elderly housing, and the general nature of the apartments, it is reasonably probable that the elderly housing units will, in fact, require less parking spaces per unit than normally required."
(Williamsburg VA)

(Portions of required parking for various needs): "Retirement or handicapped housing shall provide a minimum of one off-street parking space per unit. Eight-tenths per unit shall be open and two-tenths per unit shall be garage. Parking and drives shall be designed so as to be accessible to the main entrance of the unit. In addition to the spaces required, the developer shall reserve an additional area equal to two-tenths space per unit for possible future expansion in an area outside of the contiguous open space area. If the total number of cars belonging to residents of the retirement or handicapped structure exceeds 80% of the total space provided, the owner shall be required to provide additional spaces to maintain two-tenths spaces per unit for guests or employee parking. . ."
(Coon Rapids MN)

(Tax and fee abatements): "Wherever possible, in the opinion of Council in its sound discretion in accordance with this (zoning) Ordinance and statutory law, consideration shall be given to tax abatement and waiver of sewer connection fees for projects which qualify as elderly housing and low and middle income housing."
(Cherry Hill Township NJ)

Create an accessory elderly dwelling unit in an existing single-family dwelling

"A single-family dwelling unit may be converted to allow the incorporation of one additional dwelling unit for an elderly person in an Residence District subject to (special permits and site plan review), and the following conditions. For the purposes of this section the term incorporation shall mean either completely within an existing principal building or added to an existing principal building, provided that both dwelling units shall be attached by a common wall, floor or ceiling and not simply by an attached breezeway or porch; and shall be contained within one building.

"Qualification. No single-family dwelling shall qualify under these regulations unless such single-family dwelling shall have been on the Assessor's list as of October 1st at least five years before the date of application.

"Occupancy. The dwelling in questions shall be owner-occupied during the duration of the Special Permit.

"Elderly. At least one dwelling unit shall be occupied by a person 62 years of age or older.

"Floor area. The additional dwelling unit shall not exceed 600 sq. ft. of floor area, unless such parts of an existing dwelling are otherwise arranged or designed to be reasonably, conveniently and safely transformed into a slightly larger one-bedroom unit.

"Certificate. Prior to the issuance of a Zoning Permit, a certificate in the form of an affidavit to verify that the owner is in residence and that one of the occupants of a particular dwelling unit is elderly shall be presented to the Planning and Zoning Commission. Thereafter, the applicant shall submit such notarized affidavit to the Zoning Enforcement Officer by January 31st of each year as a requirement for the continuance of the Special Permit."
(Westport CT)

Performance guarantees to assure that a project proposal is housing for the elderly.

"The owner shall file with the Oakland County Register of Deeds a covenant, approved as to form by the City Attorney, in which said owner shall covenant on behalf of himself, his heirs, executors, and assigns not to use the property for any other use than housing for the elderly unless the use complies with all requirements of the Zoning Ordinance. Required compliance includes, but is not limited to, density, unit sizes, parking, and setbacks."
(Southfield MI)

"The holder of a special exception (for housing for the elderly) shall, not later than 30 days following the anniversary of the grant thereof, present to the city manager written documentation confirming that each of the units to which such special exception applies continues to be occupied as elderly housing."
(Williamsburg VA)

"Certificates of occupancy for all (housing for the elderly) projects . . . shall be valid for a period of one year only from the date of issuance. 60 days prior to the expiration of the permit, the applicant shall make application to have the Certificate of Occupancy renewed for an additional one year period. Upon receipt of the renewal application the Township building inspector shall make an inspection of the project to determine that full compliance with the conditions of (the chapter for housing for the elderly) and the definition of Housing for the Elderly is still being met. If it is determined by the Township building inspector that compliance with these requirements is complete, a new Certificate of Occupancy permit shall be issued for a period expiring one year from date of issuance. If the Township building inspector determines that the project is not in compliance with this Ordinance, he shall direct the applicant to remedy all such failures within 60 days. If the full remedies have not been completed within 60 days, the Certificate of Occupancy permit shall not be renewed, the project shall immediately cease operation, and no person may occupy any rooming unit therein."
(Cherry Hill Township NJ)

WHAT ABOUT _ _ _ S _ N _ ?

By Terry Jacobs[1]

Vanna White is poised radiantly near the letterboard, her dazzling smile competing with the flashing $25,000 sign. Contestant Bertha Lutz from Butte, Montana, nervously wrings her hands while she mechanically utters R,L,S,T,N and E. Pat Sajak suavely reminds her that the category is INFRASTRUCTURE. Suddenly two of the seven letter-squares light up, and Vanna glides over to turn them, revealing

Bertha from Butte is dead meat. Her eyes glaze over, and her lips never move. When the buzzer mercifully ends her ordeal, Vanna shimmers to the board to display the five remaining letters, which complete the word HOUSING! The stunned audience, silent at first, begins to hoot and whistle. Pat Sajak mumbles and actually rumples his hair. The slightest twitch is detectable in one corner of Vanna's smile -- she even forgets to wave bye-bye! The CBS switchboard overloads. That evening, while the show's Executive Producer purchases his plane ticket for Butte (where he will serve his network exile), he does not regret his choice of category -- after all, infrastructure is a buzzword of the '80s. No, his tragic flaw was selecting housing as the answer.

* * * * *

Most people would not think of housing if asked to make a list of their community's infrastructure. Even the people who should know better -- our planners, our elected and appointed officials -- would list sewers, and fire stations, and bridges, and water plants, and schools, and jails, and roads, and libraries, and the like, but not housing. Yet isn't an apartment house as much a structure as a library? Isn't housing the guts of our local tax duplicate? Isn't it in many ways our most important infrastructure? The National League of Cities seems to think so. In 1988 they surveyed 690 local officials in 473 large and small cities to reach a startling conclusion: "The shortage of affordable housing is the top hindrance to local economic growth...."[2] That's right -- not labor force, not interest rates, not venture capital, not market access, but AFFORDABLE HOUSING! And this comes not from the lips of housing advocates or social reformers, but from municipal development directors and city managers and mayors.

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[1] Terry Jacobs is a Development Specialist with the Ohio Department of Development. He also serves as Executive Secretary of the Ohio Water and Sewer Rotary Commission.

[2] The Cleveland Plain Dealer, January 13, 1989.

How, then, do we explain the back seat that housing has occupied in recent decades? Part of the answer may be that, with the exception of a tiny number of metropolitan housing authority units, housing is privately owned and operated. This makes it easy to slough off its responsibility to the private sector and the marketplace. Part of the answer may also be that housing has unfortunately (and unnecessarily) been complicated by its entanglement with a variety of social issues (We stop asking how many units of a certain type within a certain price range are needed in certain locations, because we're preoccupied with asking who's going to live next door to us.) But I suspect that, more by accident than design, housing has simply evolved as the black sheep of the infrastructure family. As in the case of a rogue relative, it is a relationship to which, if pressed, we will admit, but at the same time it is one we feel much more comfortable not talking about.

In recent decades we have distanced ourselves from this black sheep to the point that we can honestly describe housing planning as state-of-the-artless. Essentially we've done this in two ways. First, we have given housing a less important role. For example, a community will devote a great deal of staff time and money to the needs analysis and planning effort for its industrial and commercial areas, its utility systems, its schools, streets, and parks. Housing, however, is often almost an afterthought. It is not uncommon for the newest junior planner or even the Summer intern to develop the community's housing element, while key staff work on "important" matters. The housing element is usually "okay" if it stirs no controversy. Secondly, we have eroded or eradicated the housing planning talent pool. Most of the so-called housing experts we meet today are expert in their respective narrow areas of housing -- development, or finance, or marketing, or management, or federal funding programs. But where are the planners? In Ohio they seem visible in two areas: public sector administration, and quasi-planning and development of commercial projects, particularly in redeveloping downtown areas. Perhaps this, too, is the result of reason number one: if housing is not important, housing planning is not either.

To see the effects of this erosion, just take a long, hard look at most communities' housing elements in comparison with the other parts of their comprehensive plans. If someone questions the size and location of a proposed sewer main, for example, the consultant engineers who spent countless hours designing it will respond with flow charts, formulas, graphs, samples, readings, and specifications. They will come at us scientifically with data on pressure, volume, flow, and other marvels only engineers understand. They've done their homework, and their evidence seems solid. Furthermore, they can explain how this particular line becomes an integral part of the entire system, and how its very design was conceived to serve the specific residential and commercial users it will accommodate. Nor does the transportation planner operate in a vacuum. If challenged about the location and width of a particular street, he will also show us data on projected traffic flows and parking requirements, and explain how this particular street becomes an integral part of the entire system, and how its very design was conceived to serve the specific traffic it will accommodate.

But what about housing? The housing element contains a lot of data, but most of it is 5- or 10-year old census data, which were questionable when current. The tables and charts do give us isolated glimpses of segments of the housing situation; but when you think about it, looking at them is like viewing the

scattered pieces of a jigsaw puzzle -- all of the parts may be there, yet we really have no concept of the big picture. The goals and objectives statements sound nice ("Maximize use of financial assistance programs to stimulate elderly housing"; "Expand housing ownership opportunities for lower income citizens through leveraging."), but what do we do with them? And if we question the future planning of a particular part of the community for low-density single-family housing, what answer may we expect? That census data project a need for more of these units, and that this location is as good as any? Or that developers say this is what will happen? Or (best of all!) we want to have it that way so we can change it to anything we want in the future?

The fallout from a faulty housing element has serious implications. Ideally, the four comprehensive plan elements should meet together as tightly as the dovetails in expensive furniture. Like the dovetailed joints, they should function to support and reinforce each other. We can see this with respect to the other three elements when a mixed planned unit development (PUD) is proposed. First the transportation element is examined to see how traffic flows and volumes, parking, etc. will affect adjacent areas and the entire community. We can feel confident, based on our analysis, when we tell the developer to relocate a proposed street. Similarly, we can list valid reasons why he must set aside a specific piece of land for open space, since it abuts a public park site proposed in our land use and public facilities elements. But when we look at the housing element, we often come up empty. The data hasn't been sifted and its implications haven't been worked out. The goals and objectives don't really tell us anything useful. So we scurry to the zoning code, to find safety under the cover of maximum densities and minimum floor spaces. Unlike the application of the other three plan elements, we rely not on our plans but on our rules. The housing element just does not interrelate with and reciprocally support the other elements the way it really should -- the dovetails have come apart.

The fallout from a faulty housing element further taints our zoning deliberations and actions. In Stuart Meck's excellent article, we see a clear illustration of the way in which the comprehensive plan elements should serve as a guide upon which a given zoning decision may be based. But if we ponder a rezoning request involving housing and our housing element is deficient and outdated, what real policy guidance do we have? If we can't point to one or more specific parts of the housing element for the assurance that our decision is on solid ground, will our decision be other than arbitrary? How solid will the ground feel when we go to court?

So what about housing? What can we do to return some respectability to this black sheep? We can start by owning up to its legitimacy as a member of our infrastructure family. We can admit further that the housing element is a relational element of our comprehensive plan, mutually influencing and interplaying with the other elements. We can require in our housing element the same hard work by capable people which produced the other elements, and we can require it again when updating is needed. We can trash the take-some-census-data-and-add-five-percent-for-projected-growth mentality and start asking some tough questions. We can face the facts. It is a fact that the elderly population in most Ohio communities may double in the next two decades: how is our housing going to handle that? It is a fact that a dramatically higher percentage of future homeowners will be single persons,

childless couples, single heads of households: where will they live? It is a fact that, while family sizes have shrunken, our housing stock contains a great number of older, larger two-story single-family units: what is their future? It is a fact that the median price of single-family units puts most younger families right out of the ownership picture: should we still be erecting barricades to block manufactured housing?

But it is not enough to give the black sheep a haircut and a bath and a new set of clothes to guarantee his acceptance by us. Through education and citizen involvement we must erase the misconceptions and explode the myths. A lower-income person or family, for example, is not a household of extraterrestrials. In Toledo it is a family of four with an income of $26,500 a year. In Defiance County it is a woman who is supporting her two children on $15,950 annually. In Huron County it is the widowed pensioner getting by on $12,100 per year.[3] In our community it may also be the checkout clerk, the bank teller, the shoe salesperson, the law student, the delivery truck driver, the mayor's secretary, the army sergeant, the minister, my neighbor's retarded son, your parents. They deserve affordable housing choices, too.

We argue, then, for a housing element and a zoning code which are housing-aggressive. In developing or updating them, we should erect policy markers to point our way, and then devise zoning provisions to pave it, not to block it. A perceived need for elderly housing should translate into specific policies relative to elderly new construction and accessory apartments. These policies should in turn yield code provisions which enhance their realization, not frustrate them (e.g., reduced yard and parking requirements, density bonuses for inclusion in PUDs, reduced floor area requirements for conversions).

Hopefully the educational challenge will not prove too formidable, and our community can be persuaded to understand why it must be so. It is crucial if zoning is to be used as one tool to help build the ideal community we have envisioned in our comprehensive plan, and not as an implement to partition off our community, neighbor from neighbor. As Robert Frost reminds us in his poem "Mending Wall," such divisions are unnatural:

> Something there is that does not love a wall,
> That sends the frozen-ground-swell under it
> and spills the upper boulders in the sun
> ....
>
> Before I built a wall I'd ask to know
> What I was walling in or walling out,
> And to whom I was like to give offense.
> ....
> I see him there,
> Bringing a stone grasped firmly by the top
> In each hand, like an old-stone savage armed.
> He moves in darkness as it seems to me,
> Not of woods alone and the shade of trees.

---

[3] Source: U.S. Department of Housing and Urban Development.

APPENDIX M

COMMENTARY

ARTICLE 1 (GENERAL PROVISIONS)

Section 110

Both the preamble and this "purpose section" say essentially the same things. Neither mention aesthetic values, although one may surely argue their implication in such phrases as protecting property rights and promoting general welfare. Many see a trend toward more acceptance by courts of reasonable aesthetic standards:

> 90S(3d)69, OBR273, 458 NE(2d)852(1984), Hudson v Albrect, Inc; Appeal Dismissed by 467US 1237,104 SC & 3503, 82 LEd(2d)814(1984). There is a legitimate governmental interest in maintaining the aesthetics of the community and, as such, aesthetic considerations may be taken into account by the legislative body in enacting zoning legislation.

Similarly, neither this "purpose section" nor the preamble must mention a comprehensive plan in the case of a municipal zoning ordinance. While ORC Sections 302.02 and 519.02 respectively indicate that counties and townships must have such a plan prior to the adoption of zoning, the ORC makes no such requirements for municipalities:

> 63 App(2d) 34,409 NE(2d) 258(1979), Central Motors Corp v Pepper Pike. Because Ohio law does not require a municipality to adopt a comprehensive zoning plan as a condition precedent to the enactment of zoning legislation, a municipality has the discretion as to whether it will adopt a comprehensive zoning plan; failure to have a zoning plan which is separate and distinct from a zoning ordinance does not render a zoning ordinance unconstitutional; a challenge to the constitutionality of a zoning ordinance must be on the basis that the ordinance is arbitrary, unreasonable, confiscatory, and not based on the public health, safety, morals, and general welfare.

However, municipalities may be inviting serious legal problems by choosing to adopt a zoning code which is not supported by a comprehensive plan. The plan provides the rationale and logic for the code and the code's enforcement in its expressed policy statements, goals and objectives, which in turn are founded upon the analysis of current and projected needs. A good plan, then, is one of the best defenses against charges of arbitrary and unreasonable zoning and zoning enforcement.

Section 130

The purpose of this section is to assert that in a sense each section of the code stands apart as a distinct entity so that, should a court find that one section is invalid or unconstitutional, the rest of the code remains legally intact.

Section 140

This section relates to Section 120. When enacting a new code, it is wise to list the resolutions/ordinances which are being repealed.

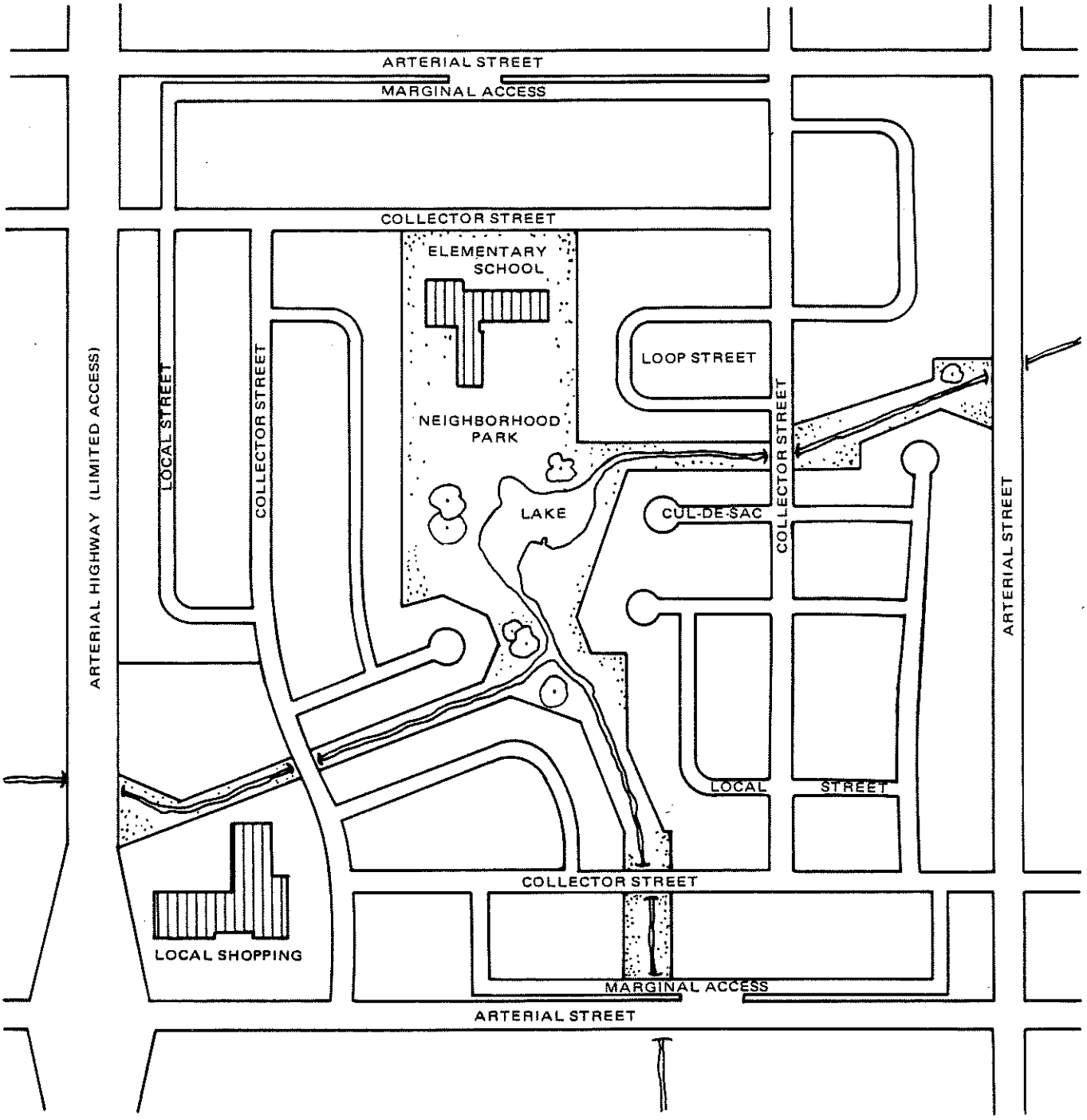
ARTICLE 2 (DEFINITIONS)

General

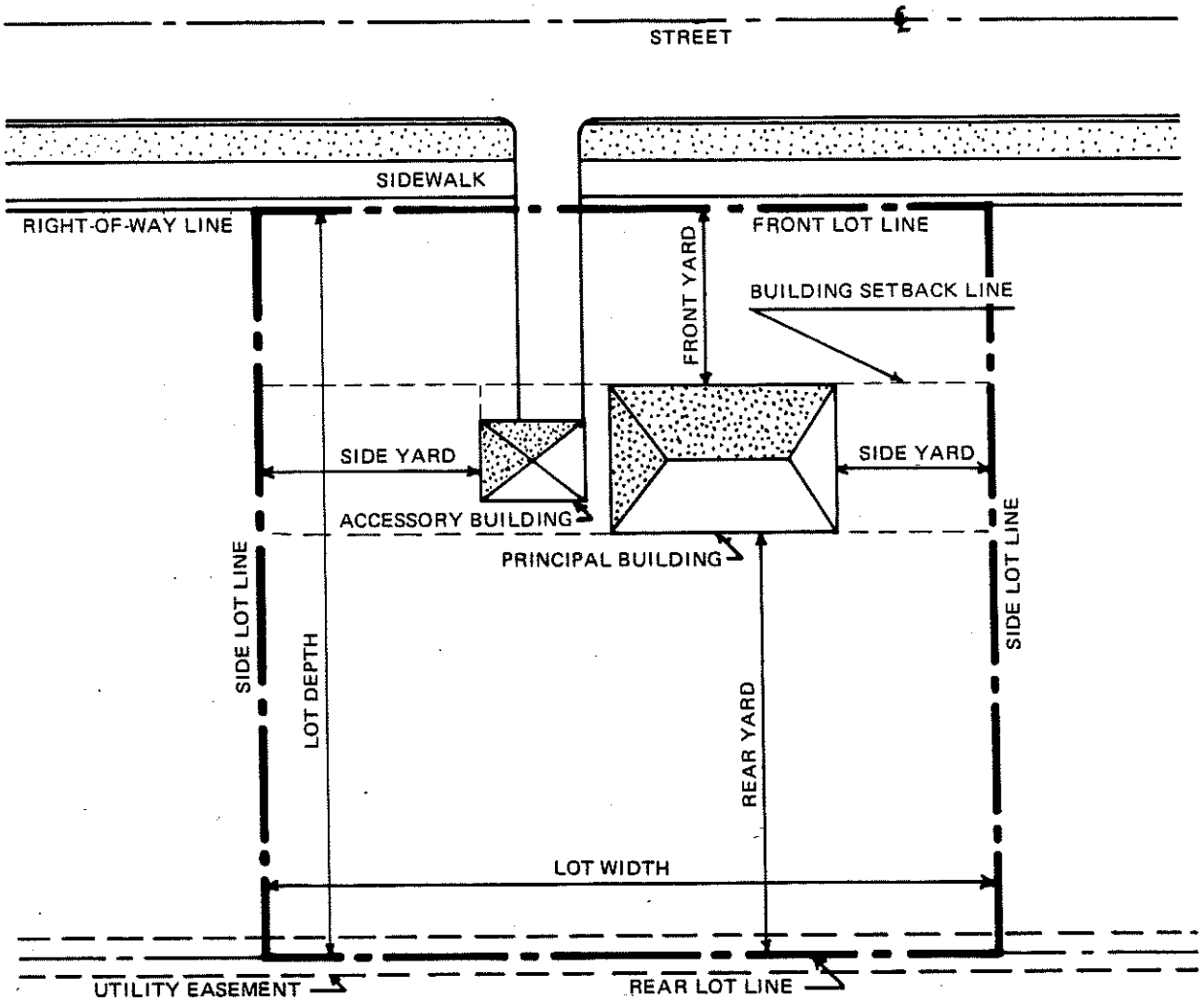
Accurate, precise definitions are crucial. Equally important are their uniform and consistent use throughout the code. The list of definitions in this Model Code is by no means exhaustive, and many more terms could be added. Here are some suggestions:

1. Look at other local codes, planning publications, and textbooks for different definitions of the same terms.
2. Look at your area's needs, for you may have some unusual terms to define (e.g., feedlot, university zone, migrant worker camp).
3. Look carefully at typical zoning language which often has given technical meaning in codes (e.g., "construction" may include demolition, excavation) or accepted legal meaning ("lot").
4. Look at federal and state law for definitions of terms you need to use or define. For example, federal law contains a definition of "manufactured housing," and state law defines a "child day care center."
5. Look carefully at the definition of such key terms as "family" because one definition may affect other definitions (e.g., single-family housing).
6. If updating an older code, look for terms which may have come into use recently, such as "home occupation" or "research facility."
7. After doing the rough draft of the code or a draft update, look at the use of a term in the text as it compares with your definition--it may need fine tuning.
8. Look over key definitions with the Zoning Administrator and the Law Director/Prosecutor, who will have to interpret, enforce, and defend these terms.
9. Ask for comments from outsiders (a neighboring township's zoning inspector, a university planning department member, a county planning director).

Consider the use of illustrations, not to replace definitions, but to enhance them. Many codes provide illustrations with the definitions or as separate appendices. They help to cut down confusion and are user-friendly. They are particularly useful for sections dealing with signs, lots, buildings, streets, and parking. Here are some samples.



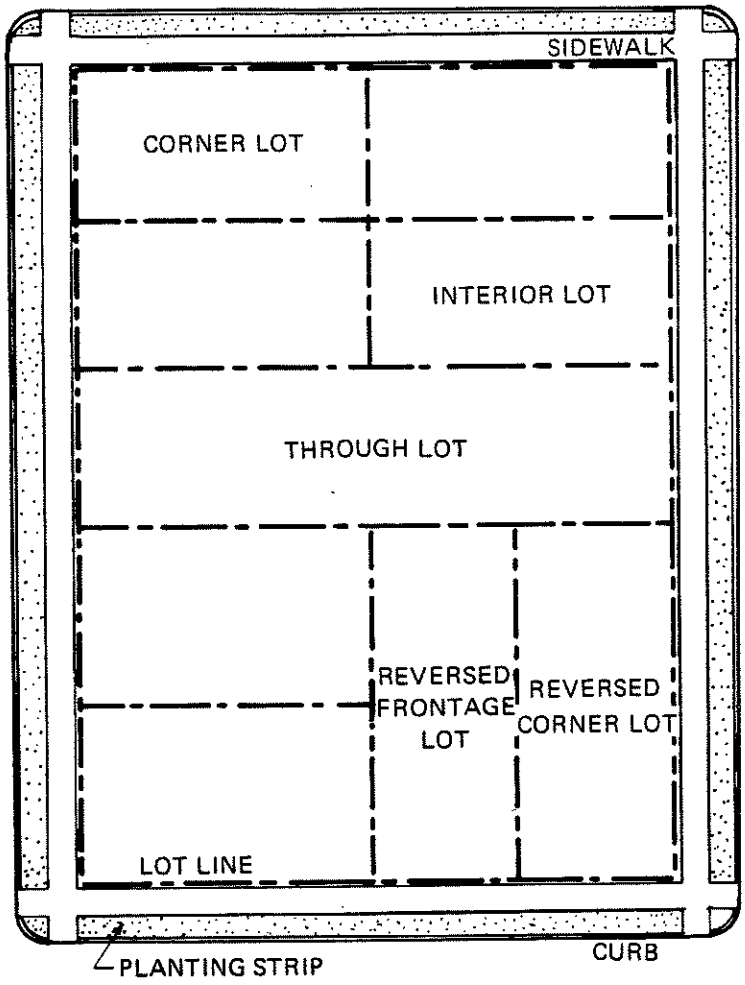
CLASSIFICATION OF THE THOROUGHFARE SYSTEM



LOT AREA= TOTAL HORIZONTAL AREA

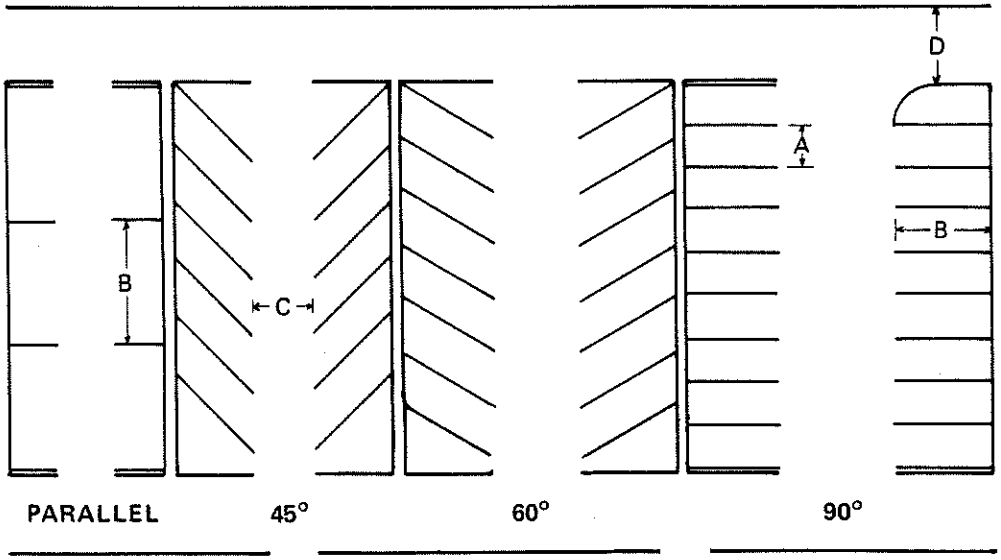
LOT COVERAGE= PER CENT OF LOT OCCUPIED BY BUILDING

LOT TERMS



TYPES OF LOTS

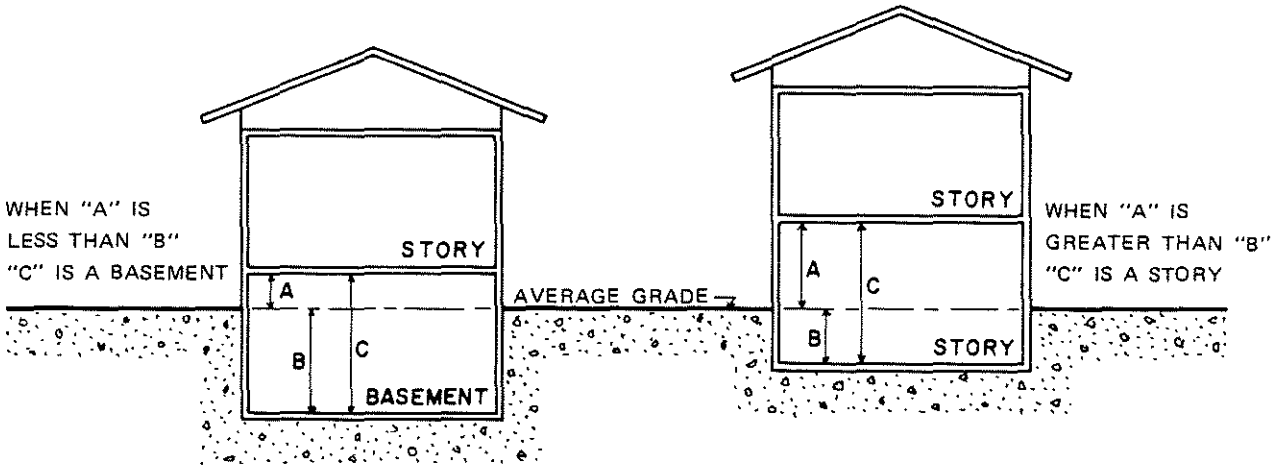
OFF-STREET PARKING AND LOADING FACILITIES



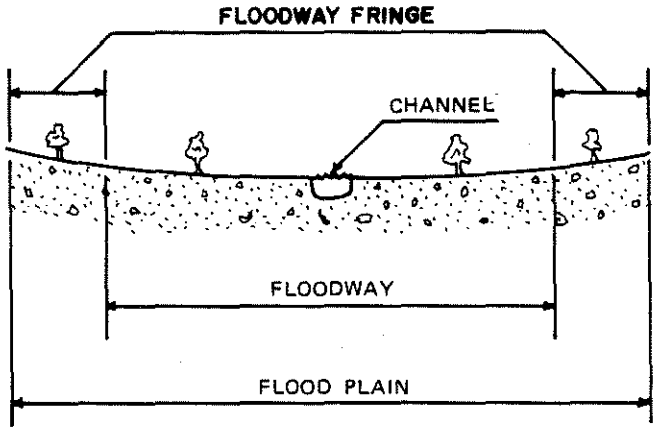
OFFSTREET PARKING

OFF-STREET PARKING DIMENSIONAL TABLE

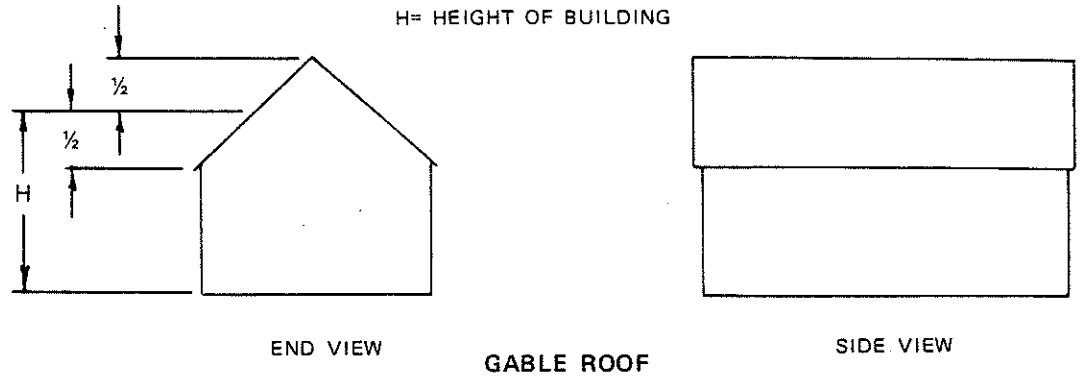
		45°	60°	90°	Parallel
A	Width of Parking Space	12′	10′	9′	9′
B	Length of Parking Space	19′	19′	19′	23′
C	Width of Driveway Aisle	13′	17′6″	25′	12′
D	Width of Access Driveway	17′	14′	14′	14′



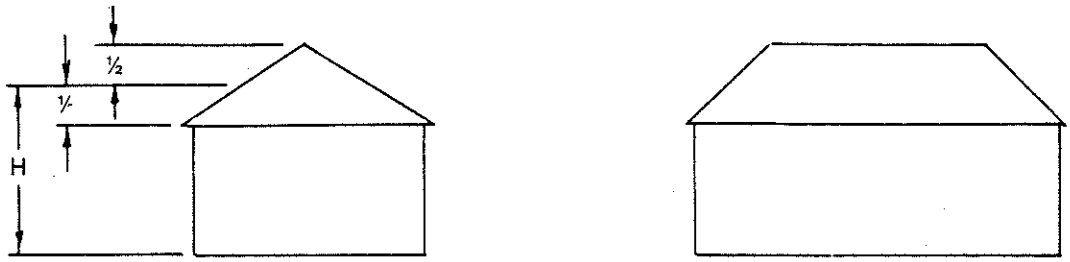
BASEMENT & STORY



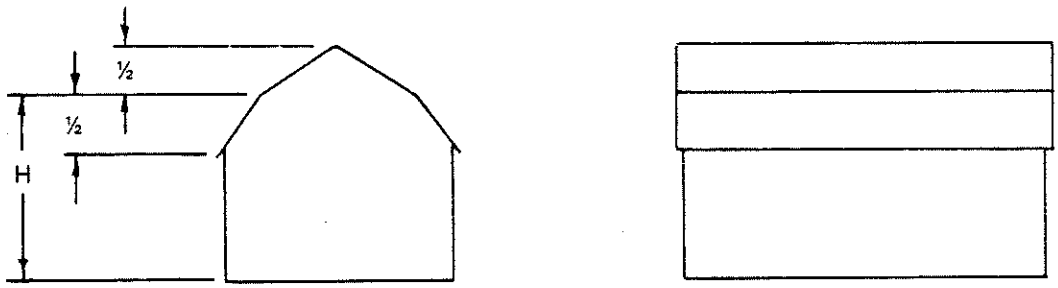
FLOOD PLAIN TERMS



GABLE ROOF

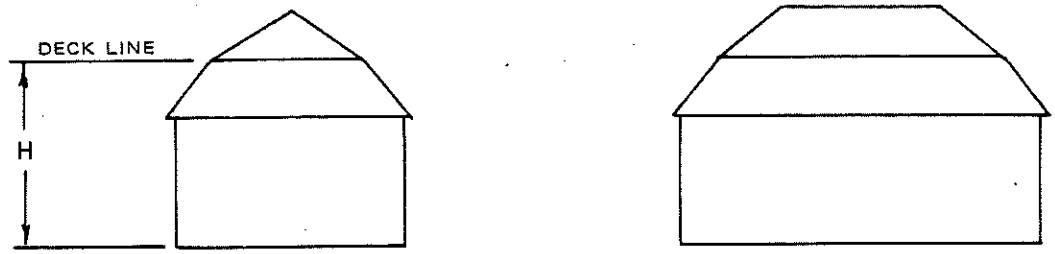


HIP ROOF



GAMBREL ROOF

80



MANSARD ROOF

ROOF TYPES AND BUILDING HEIGHT

ARTICLE 3 (NONCONFORMITIES)

General

No matter how carefully district boundaries have been drawn, certain uses, buildings, lands or structures will not meet the district requirements. Subsequent zoning amendments or district changes will also render certain uses nonconforming. Such uses, buildings, lands, or structures must be allowed to remain; however, their use should be regulated, and ultimately be eliminated. Notice should be taken of the fact that this article is entitled "Nonconformities" and not "Nonconforming Uses." In the past, problems with nonconformities often stemmed from a lack of understanding and separation of the different types of nonconformities. This article attempts to remedy these problems by reorganizing the various types of nonconformities as follows:

1. Nonconforming lots;
2. Nonconforming uses of land;
3. Nonconforming structures;
4. Nonconforming uses of structures or structures and land in combination.

Section 300

This section classifies the various types of nonconformities in the ordinance (resolution). Nonconformities are permitted to continue, but their continuance is not encouraged. Nonconformities are not allowed to be expanded or enlarged, which is different from the manner in which they had been traditionally handled. The existence of nonconformities may not be used as grounds for variances.

One of the duties of the zoning administrator should be to maintain an accurate list of all nonconformities in the community. This inventory, begun when the zoning ordinance (resolution) is enacted, is extremely useful in determining which uses were actually in existence at the time of passage and which uses and structures have been created since that time. Obviously, the latter are not nonconformities but violations of the ordinance (resolution).

Section 302

This section states more emphatically than Section 300 that nonconformities are incompatible with permitted uses. This provision also breaks with tradition by allowing no enlargement or expansion of nonconforming uses. While some zoning ordinances (resolutions) still allow a certain percent of expansion, this would be in direct conflict with the purposes of this article.

Section 310

It is not the intent to require a change in plans, construction, or anticipated use where actual construction has begun prior to the adoption or subsequent amendment of the ordinance (resolution). The definition of actual construction should be carefully noted.

Section 340, 341

These sections deal with nonconforming lots of record. A lot of record that does not meet minimum requirements for lot width or lot area may be used for a single family dwelling with usual accessory buildings provided that all other provisions of the district are met. However, if a series of lots below the requirements are owned, there must be a combination of lots in an effort to reach the minimum lot width and/or area required in the district. Lots of this nature may be numerous in some recreation-oriented, lake front communities. If all other provisions of the ordinance are met, the provision of allowing single-family dwellings on individual substandard lots may actually exclude the use of a small lot of record. For example, a 35-foot wide lot of record in a district that requires ten foot side yards could not be built upon because the side yard requirements would leave only fifteen feet to build on. Problems of this nature, however, would have to be solved by the board of zoning appeals through the variance procedure in Article 4.

Section 350

Nonconforming uses of land may be continued, provided they meet the four conditions set forth. Condition 3 specifies that, if a nonconforming use of land is voluntarily discontinued for a period of more than two years, any subsequent use must conform to the requirements of the district in which it is located.

Section 370

The third provision empowers the board of zoning appeals to allow the substitution of one proposed nonconforming use for an existing nonconforming use, if the proposed use is equally as/more appropriate than the existing one. The appeals procedure outlined in Article 4 requires that the permit request for the substitution first be made to the zoning administrator, who must, of course, deny the permit. The appeal is then taken to the board.

ARTICLE 4 (APPEALS AND VARIANCES)

General

A recent court finding (23OS(3d)83,23 OBR 212, 491 NE(2d)692(1986), Duncan v Middlefield) does a fine job of listing reasonable considerations in a variance deliberation:

> Considerations in the determination of whether a landowner's practical difficulties in the use of his property as zoned justify grant of an area variance include: (1) whether the property will produce a reasonable return or have a beneficial use without the variance; (2) whether the variance is substantial; (3) whether grant of the variance would greatly alter the essential character of the neighborhood or cause substantial detriment to neighboring property; (4) whether the variance would adversely affect provisions of water, trash collection, sewers, or other governmental services; (5) whether the owner knew of the zoning restriction when he bought the property; (6) whether the owner's predicament may be obviated other than by a variance; and (7) whether grant of the variance would serve the spirit and intent of the zoning requirement and do substantial justice.

Section 401

Appeals are one of the specific duties of the board of zoning appeals as specified in Section 1332. An appeal usually involves an administrative action or interpretion of the ordinance (resolution) by the zoning administrator. Appeals often involve different interpretations of one or more clauses of the code by the applicant and the zoning administrator. If the zoning administrator refuses to issue a zoning permit and the applicant feels that the administrator has misinterpreted the ordinance (resolution), the applicant may appeal to the board of zoning appeals. The board of zoning appeals then reviews the case to see if the zoning administrator has acted in conformance with the provisions of the ordinance (resolution). If the board of zoning appeals finds that the zoning administrator was justified in refusing to grant the permit, they shall uphold his decision. If, on the other hand, the board of zoning appeals finds that he was in error, they shall issue an order for the zoning administrator to grant the zoning permit. If the board of zoning appeals acts in the former manner, the applicant may request a variance under a separate application. A citizen can also appeal to the board of zoning appeals a decision of the administrator to grant a zoning permit where the citizen believes that the permit should not have been granted. A sample application for appeal form is in Appendix E.

Section 410

A request for a variance is a type of appeal whereby the applicant requests a relaxation or relief from the strict application of the provisions of the code. Generally, a variance applies only to a specific parcel of property and is sought because the applicant believes that, due to peculiar conditions, a literal enforcement of the code will result in unnecessary hardship and a failure to do justice under the spirit of the law.

The granting of variances is one of the most abused powers of zoning. If granted too liberally, variances may destroy the basic intent of the ordinance (resolution). The board of zoning appeals should never act arbitrarily, but must always be guided in its actions by standards or guidelines. Standards for variances are established in Section 411. In granting of variances, the board of zoning appeals may also specify conditions and safeguards (Section 412) to assure that the basic intent of the ordinance (resolution) will be upheld. Such conditions and safeguards must be reasonable in scope. Following are some items the board of zoning appeals should consider before final determination of a variance:

1. The board of zoning appeals must clearly recognize the special conditions in existence for the lot or use in question that would create an undue hardship for this particular case. The hardship should not be self-imposed from previous actions in any way, should not be purely a financial hardship, and must not simply be for the convenience of the applicant.

2. Before granting any variance, the board of zoning appeals must make sure that the variance will not in any way deviate from any purpose of this ordinance (resolution), nor will the variance cause any substantial detriment to the public interest.

3. The board of zoning appeals must realize that by granting a variance they will establish a precedent, and should, therefore, have evidence that there really exist extraordinary circumstances that will not frequently recur.

4. As a general rule, if rezoning of the property in question may be proper and would make a variance unnecessary, the variance should be denied.

5. Any variance approved by the board of zoning appeals should represent the least variance possible, insure that the hardship will not be extreme, and that proper and just relief will result.

6. Perhaps most important, a variance must not be granted to allow a use which would otherwise be prohibited in the zoning district involved. A variance of this type is not a variance at all, but in reality is an amendment to the zoning map. Amendments may be made only after a recommendation by the planning (zoning) commission and action by the legislative authority as outlined in Article 6.

Section 411

The items recommended here are illustrative and not meant to be all-inclusive. The board of zoning appeals must find in writing that the granting of a variance meets all of the standards stated in number 5. An Application for Variance sample form is contained in Appendix E.

ARTICLE 5 (CONDITIONAL USES: SUBSTANTIALLY SIMILAR USES; ACCESSORY USES)

General

A specific use (for example, a funeral home) may be a permitted use in a commercial district, but that same use may be a conditional one in a residential district. That is, the use may be ultimately allowed in both districts, but in the residential district certain "assurances" or "terms" called conditions must be met first, and a process is set in place so that everyone is protected -- the owner must file an application, a hearing is held, and a decision is made, based upon specific criteria.

It is important that each application and each case be viewed distinctly:

> No. 11153 (9th Dist G App, Summit, 1-25-84), CHORPENNING v Tallmadge. The fact that a city council granted an application for a conditional zoning certificate cannot be used as a basis for requiring the granting of all subsequent applications of a similar nature, since each application must be considered separately on its own set of facts.
>
> No. 7500 (2d Dist G App, Montgomery, 2-2-82), Fairmont Foods v Dayton. The quantity of similar conditional uses may not be the sole reason for denying a request for a conditional use permit.

Section 501

The board of zoning appeals also has the responsibility to issue conditional zoning permits for those uses specifically provided for in the ordinance (resolution). In effect, a conditional use is permitted use with various restrictions. Conditional uses generally possess special or unique characteristics and must, therefore, be considered individually. Whereas the board of zoning appeals has appellate jurisdiction on appeals and variances, it has original jurisdiction on conditional uses.

Section 510

The items recommended to be included in the application for a conditional use permit are only for illustrative purposes and are not meant to be all inclusive. A sample Application for Conditional Use Permit is found in Appendix E.

Section 520

The standards here are also illustrative. Since the board of zoning appeals must not act arbitrarily but act within the limits of identifiable guidelines, these standards should be as concrete as possible, and should be generally applicable to all conditional uses.

Section 530

In contrast to the general standards in Section 520, here we find samples of specific criteria to apply to each type of conditional use. Again, these are illustrative and not all inclusive. Many zoning codes instead use a matrix-type chart to show, district by district, which uses are permitted by right and which are permitted as conditional uses. This chart, called the "Official Schedule of District Regulations," may also show which conditional use criteria apply to that use in that district. Here is a sample:

ZONING DISTRICT	PERMITTED USES	CONDITIONAL USES	CONDITIONAL USE CRITERIA
R1	Single-family Housing Church Elementary School (ETC.)		
		Child DayCare Center	4, 8, 13
		Cemetery	5, 11, 19, 31
		(ETC.)	

This segment from the Official Schedule shows us that a cemetery is a conditional use in the R-1 District, and that such use must meet criteria 5, 11, 19, and 31 (we can find out what these criteria are by looking at the accompanying list of such criteria).

Subsection No. 6 provides suggested criteria for conditional use permits for certain day-care facilities. Ohio Revised Code Chapter 5104, enacted in 1986, provides for such facilities (and was the source of our Model's definitions). This legislation prohibits the requiring of conditional or special use permits for the smaller Type B facilities:

> Any Type B family day-care home, whether certified or not certified by the county director of human services, shall be considered to be a residential use of property for purposes of municipal, county, and township zoning and shall be a permitted use in all zoning districts in which residential uses are permitted. No municipal, county, or township zoning regulations shall require a conditional use permit or any other special exception certification for any such Type B family day-care home. (ORC 5104.054)

However, Type A family day-care homes and child day-care centers may (and should) be conditionally permitted uses. The criteria in Section 530 are suggested for this purpose. (Note: both the Type A homes and the centers are required to be licensed and to be in compliance with building inspection and fire safety requirements. Boards of zoning appeals should consider potential rush hour traffic congestion problems with respect to location of the larger centers, since working parents tend to drop off and pick up children at the same times).

Section 540

As in the case of appeals and variances, a public hearing must be held for conditional uses, following basically the same procedures.

Section 550

The importance of the written finding and its basis in fact is underscored by the Fairmont Foods Co. v Dayton finding: "Denial of an application for a conditional use permit by a local zoning board requires a finding that there is a reasonable possibility of adverse impact upon granting of such permit."

Section 552

A conditional use permit is not transferable to another use.

Sections 560-564 (Substantially Similar Uses)

Some experts question the legality of the substantially similar use determination, arguing that it gives the board of zoning appeals the authority to "rule a new use" into the system, which borders on legislation and skirts the amendment process. If this view is shared by a community, it should not include these provisions in its code. The concept here is to allow communities to recognize a use not listed on its official schedules if there already has been identified a use to which it is truly similar, particularly with respect to its impacts.

Sections 570-575 (Accessory Uses)

A precise definition of "accessory use" is vital to local code administration and enforcement. Due to current interest or controversy surrounding some accessory uses, we have highlighted them in Article 10 under Special Regulations (satellite dish antennas and home occupations, for example). Communities may choose to do so also. Section 575 provides for the conversion of single-family dwelling-units to allow the incorporation of an accessory elderly dwelling unit on the premises, making an exception to the usual conversion requirements of Model Section 901(2). Such a conversation constitutes a permitted conversion if all of the stipulations of Section 575 are met, and if other zoning and building code requirements are satisfied. It is believed this provision will drastically reduce the number of illegal conversions and accompanying illegal accessory uses.

ARTICLE 6 (AMENDMENTS)

General

Due to ORC differences, our Model contains two Articles here, as indicated. Townships and counties should note that Amended Senate Bill 112, effective May 31, 1988, made several changes in the ORC respecting time limits governing the amendment process (see Appendices A and B). Municipal legislation (Appendix C) is generally not so specific relative to time limits as the law governing counties and townships, and in this Model have been shortened where possible to streamline the procedure.

Some local codes simply reference the Ohio Revised Code with respect to these procedures and their respective time limits. This creates two problems. First, it is easy to begin to let procedure slip and to miss a time limit or two. As one of our articles in Appendix L stresses, this can cost you dearly in court. Second, this is not very user-friendly. It requires people governed by the code to do legal research, which isn't right. So, spell it out and follow it religiously.

Section 602

Since changes are bound to occur in any community over time, it is an important function of the legislative and the planning bodies to initiate amendments to accommodate these changes.

Section 603, 604

These items are listed in a manner which should facilitate completion of the sample Application for Zoning Amendment form in Appendix E and the drafting of the required ordinance (resolution). Please note that a textual amendment request under Section 604 requires much less information.

Section 606 (Municipal), 607 (County & Township)

This requirement of notification of the State Director of Transportation, which really serves as a protection of the community, is often overlooked.

Sections 608-610 (County & Township)

Counties and townships must hold hearings on all map and text amendments. Following the procedures on time is critical.

Section 611 (Municipal), 613 (County & Township)

The legislative authority has final approval of all amendments. However, if they choose to deviate from the commission's recommendation, the council must do so by a three-fourths vote, and the trustees and commissioners by unanimous votes. Although a municipal council can pass a zoning amendment as emergency legislation, such action is not recommended, since it greatly erodes confidence in both the council and the entire process.

Section 613 (Municipal)

Annexation actions take time, sufficient time for the municipality to have its amendment(s) ready to take effect when the land is added.

ARTICLE 7 (ESTABLISHING DISTRICTS; ZONING MAP)

General

The stop sign directed the reader here at this point because, as Fred Bair correctly stated, "No model zoning text can include a meaningful schedule of district regulations." Trying to produce a model list of districts with a model set of regulations for each district would be like trying to tailor a single set of clothing that would comfortably fit every man, woman, and child. Each community, like each individual, has its own personality and distinct characteristics. For example, a small rural town may not have (nor ever need) a heavy manufacturing district, but the large city may have more than one. A village with a population of 400 may need only two residential districts, but a metropolitan city may need a dozen. Thus, while some parts of the Model could be adopted and used by virtually any community, the individuality of a community comes forth in its district regulations. If a community has no zoning or faces a major zoning code overhaul after many years, the wisest move may be to spend some time with (and perhaps overhaul) the comprehensive plan first. The plan's maps show current land uses, a good place to start. (Plat maps are also available.) The streets, sewer and water lines, schools, fire stations, etc. are there also. With some time and effort, the pieces can be put together. Now, what of the future? Given what the community leaders and the local economy and the census data and the geography tell us, what is our community really likely to be like ten years from now? What is really likely to happen growth-wise, and where are the best places for it to occur? (The remote village with little labor force, barely adequate water and sewer systems, and a struggling economy is not facing reality if it reserves half of its land for an industrial park.) With a functional comprehensive plan in hand, the community can turn to zoning district considerations.

Section 710

Again, these are merely samples. Small villages and rural townships may have no call for high density residential districts or overlay districts. Many codes provide "Statements of Purpose" for each district, which include the reason for each district in a descriptive manner. Here are some samples:

> Residential District I (R-I)
>
> The R-I district is designed to accommodate single-family residential development in areas within the planning jurisdiction that are not served by public water and/or sewer facilities and that are not yet appropriate for development at higher densities.
>
> Residential District III (R-III)
>
> The R-III district is designed to accommodate single-family detached, two-family, and multi-family residential uses at medium to medium high densities.
>
> Local Business District (B-II)
>
> The B-II district is designed to accommodate business activities (e.g., convenience goods and personal services) which tend to meet the daily needs of the residents of an immediate neighborhood.

Highway Service District (B-IV)

The B-IV district is designed to accommodate commercial activities that draw business primarily from and provide services primarily to motorists. The B-IV district is generally associated with interchange areas along major limited access highways.

Professional Research Office District (PRO)

The PRO district is established and designed to accommodate and encourage the grouping of professional, research, administrative, and similar uses. The PRO district is further intended to serve as a buffer between other more intense non-residential areas and the residential districts.

Section 720

It should be noted that this section does not simply refer to the existence of a zoning map, but incorporates the map as part of the adopted ordinance. The map must be published with the text, unless the location of each district is described in the text in language similar to a surveyor's property description:

> 9APP(2d) 76,222NE(2d) 830(1967), TIRPACK v MARC. Where a zoning ordinance for a noncharter municipality, adopted pursuant to the provisions of Ch 713, does not describe in the text thereof the boundaries of the zones, or districts, thereby to be created, but provides, instead, that such districts are bounded and defined on a map identified by title, date, and certification, "which map accompanies this ordinance, and is hereby made a part thereof," in order to comply with 713.20, 713.21, and 713.22, it is mandatory that such map be published along with the text of the ordinance, and where such map, incorporated by reference in such manner in a zoning ordinance has not been published along with the text of the ordinance, then, as prescribed by 731.26, it is a sufficient defense to any suit or prosecution under the zoning ordinance to show that no publication of the zoning map was thus made.

The map, of course, is the reasonable way -- not only are the metes-and-bounds-and-angles descriptions very user-unfriendly, but they also make amendments more confusing.

A community may encounter equally serious legal problems if the map is not kept up to date. Accordingly, our Model makes the zoning administrator responsible for its upkeep and includes an annual recertification requirement.

Some communities use color-coding for districts, while others use combinations of dots, lines, or other graphic patterns. Medina County and several other communities are developing computer mapping technology, which in future will likely be commonplace. The Medina County Engineer can now show the zoning for all parcels in an area. The beauty of this system is twofold. First, utility lines can be superimposed upon the map, as can topography. The system can also be shared by the Auditor, the Recorder, the Planning Commission. Secondly, changes can be made quickly and new maps printed out just as quickly.

ARTICLE 8 (DISTRICT REGULATIONS)

General

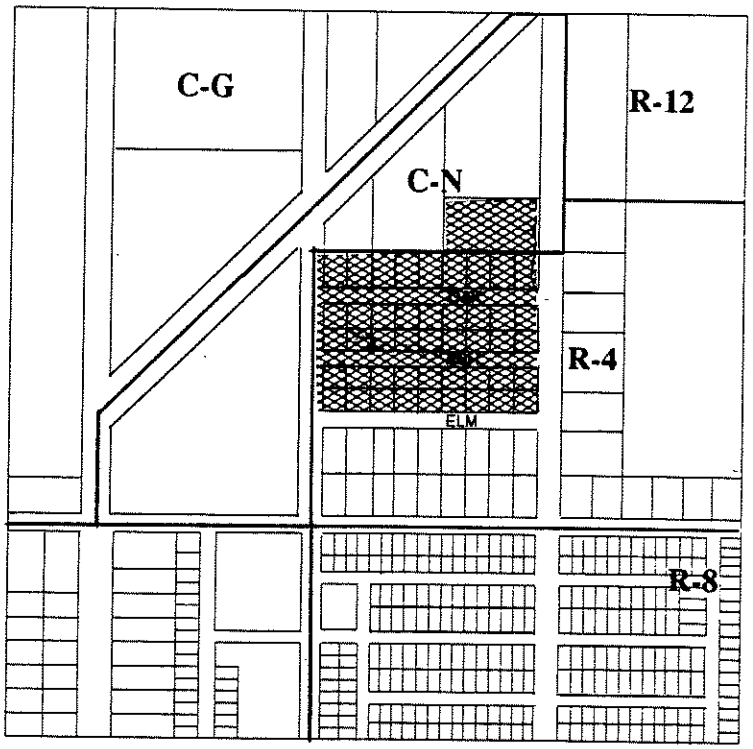
The stop sign again directed the reader here for some explanation. There are at least six ways in which localities usually organize their district regulations. If a community already has a code or has a preference for a certain type of organization, that's fine. Larger cities' systems by nature seem to be more complex than smaller communities, where less uses and less potential conflicts may make things simpler. Since our model does not presume to fit everyone with the same suit of clothes (and since sometimes there is no accounting for taste!), THESE PAGES DO NOT REPRESENT PROPOSED MODEL REGULATIONS BUT INSTEAD PROVIDE SAMPLES OF DIFFERENT APPROACHES USED BY FIVE DIFFERENT SOURCES -- the City of Logan, a Model Code done by Ohio in 1972, the City of Cincinnati, Franklin County, and the City of Kettering.

Here the issue is format or organization, not content. The reader is asked to look at how things are arranged, to examine the benefits and drawbacks of each method. For example, the final page of the Logan sample seems to tell us a great deal about this R-2 district on a one-page chart, and it contains page references for further details on the requirements for the listed conditional uses. On the other hand, it does not list accessory uses, and it does not show us at a glance all of the districts in which a particular use is either permitted, conditional, or not permitted. However, we do find that information in the Kettering tables. In lieu of the Logan-type chart, the Model Code (Sample B) provides a listing of uses, together with lot, yard, and building requirements. The Cincinnati sample is much more extensive than the Franklin County sample. However, with the exception of needed references to the code's conditional use and accessory use requirements, the regulations for the sample Cincinnati district are virtually self-contained -- that is, notwithstanding the cursory references at the end for height, yard, parking, etc., the reader gets the basic district rules clearly in one place. The Franklin County sample is comparatively compact, but the user in some cases must go elsewhere in the code to find out the basics, like what accessory uses are permitted in this district (compare the two samples with respect to accessory uses).

Which method should a community use? That question can be answered by answering two others: Which sample (or combination of samples) is the best suited to your community? Which is the most user-friendly? (For example, would the addition of a Kettering-type matrix make the Cincinnati method even more user-friendly?)

Drafting district regulations is a very difficult, time-consuming task. Choose the best format for your community, and make modifications along the way. Look at other codes for guidance, and get the input of the zoning administrator, the attorney, the planner. Circulate pieces of it for review and comment by your peers. Rework it until it is right -- a faulty, inadequate set of district regulations will come back to haunt you. The harder you work on your district regulations, the easier they will be to use, to enforce, to amend, and to defend.

A community may need to establish one or more special districts (districts created to meet the needs of an area experiencing unusual problems, or designed to meet special needs, such as a university district, a hotel/motel district, an airport district, a hospital district, an historical district, or an overlay district). Some special districts may be affected by the regulations of the federal or state government -- the Ohio Historical Society, the Aviation Division of the Ohio Department of Transportation. It is important to review such requirements, just as it is wise to obtain from other communities which have such districts in place whatever insights they may provide from their own experience. This Model contains appendices which provide some samples, including an historic overlay district sample. Simply stated, such an overlay district is superimposed upon portions of existing zoning map districts, adding its special requirements to those already in effect in the underlying districts. The overlay district must appear on the map, and might be shown thusly.



ARTICLE 9 (SUPPLEMENTAL DISTRICT REGULATIONS)

General

This Article contains a miscellany of requirements which generally apply in all districts. Such yard, height, fence, and screening provisions often keep the zoning inspector busy, and are often at the root of variance requests and enforcement actions.

Section 912

The intent of this section is to prevent fences higher than two and one half (2 1/2) feet in the front yard. This may create problems in some areas and may be modified where no safety hazard will result. No mention is made of side and rear fences; this should be handled locally.

Section 916

The architectural projections listed in this section must also meet all yard requirements. In the past, certain architectural projections, such as open porches, have been permitted to protrude into required yards, but this practice may lead to requests for enclosing such structures, which conflicts with the purpose of yard requirements.

Section 920

Fortunately the Ohio Environmental Protection Agency has assumed the burden of regulating most of these problems. The "standards" listed here are primarily examples. However, if a community has a particularly serious concern, detailed performance-type requirements should be written.

Section 930

While some of these requirements may appear rather strict, temporary uses which get out of hand can prove very disruptive to a community and occupy a great amount of inspection and enforcement time.

ARTICLE 10 (SPECIAL REGULATIONS)

General

While these special regulations are also illustrative and by no means all-inclusive, we selected them because many communities have expressed concern or confusion about them, and because many citizens view them as controversial. Our research of current codes finds that some have no provisions for factory-built housing, some have adult entertainment provisions which are probably unconstitutional, some are seriously out-of-date respecting home occupations, and some illegally bar satellite antennas from certain neighborhoods. But uses which are controversial and emotional do not go away if ignored: if ignored, they normally create twice as many problems than if they had been properly attended to. Some readers may question the legality of some of these sample provisions, but then that is part of what makes the uses in question controversial to begin with. With respect to such regulations, it is most important to keep current and get accurate legal counsel. The layman should not assess the implications of a technically worded appeals court finding as they apply to his community's zoning code. Nor should the elected official determine that the ruling of New Jersey's Supreme Court on an intricate zoning case makes his Ohio community's similar zoning provision unconstitutional. But the partnership of planner, attorney, and administrator can protect the community by closely following current developments and court cases, and by being particularly vigilant respecting controversial provisions.

Sections 1000.10 - 1000.16 (Satellite Antennas)

The Federal Communications Commission has made it clear that a community can not arbitrarily outlaw satellite dishes entirely, nor can it apparently completely "zone them out" of entire districts. This does not mean that a community can not regulate them as a use, particularly since it can readily be shown that their unlimited and haphazard construction/installation can lead to fire safety problems, debris and weed problems, physical safety problems, and even crime problems. While it may be true that some of the features of these model requirements could also be covered in local building codes, there are many Ohio localities which lack such codes or lack proper enforcement of them.

Section 1000.13

A permit is required in all cases.

Section 1000.14 and 1000.15

Technological advances in the electronics field have led to 36" and even 32" antennas well-suited for roof mounting which serve the user as effectively as the ground-mounted 12' devices first developed. In these model regulations, both types are treated as accessory uses. However, while the roof-mounted type is permitted by right in all districts, the ground-mounted type is restricted from those districts which the community specifies.

Sections 1000.20 - 1000.29 (Amusement Arcades)

The level of sophistication and detail in zoning regulations affecting this use may depend upon other local conditions. For example, some of the sample requirements in Section 1000.23 may be unnecessary if such requirements are present in licensing requirements or other regulations. In Section 1000.24, the local unit of government indicates the specific districts in which this use is conditionally permitted.

Sections 1000.30 - 1000.34 (Adult Entertainment Business)

The regulation of adult entertainment businesses is a difficult, legally complex issue with a sometimes confusing trail of case law. For this reason, many argue that these model regulations should avoid the matter entirely. However, we have included a sample of such regulations since so many Ohio local governments see this as a serious problem area. It is crucial that the community's legal advisor look at this area and any proposed regulations very carefully -- first Amendment issues have subtle implications.

Several recent court findings indicate that "distancing" requirements are valid if reasonable, even if they combine with other zoning provisions which in effect permit such a use in very few locations:

> 106 SG 925,89 LEd(2d) 29 (1986), RENTON v Playtime Theatres, Inc. A municipal ordinance restricting "adult" theatres to a zone distant from churches, homes, and schools to preserve the quality of neighborhoods and shopping districts is not a restriction based on the content of material displayed in the theatres, and shall be reviewed under standards applied to "content-neutral" time, place, and manner restrictions; evidence of conditions in other cities is sufficient proof of the deleterious effects of "adult" theatres to support the ordinance.

> A municipal ordinance that has the effect of forbidding the use of ninety-five percent of the land in the city as sites for "adult" theatres does not violate US Const Am 1 even where almost all the remaining land is already used or otherwise unavailable.

However, the finding in the 1988 decision of a Maryland Federal District Court in Baltimore Boulevard, Inc. v Prince George's County was against the County. While the County's code also seemed "content-neutral" (that is, locational restrictions are based not on the content of the material in the establishment, but on the impact of such establishments upon the community), the court noted that no such impact evidence (from the County or elsewhere) had ever been gathered or analyzed. The regulation was therefore struck down as arbitrary. The court further found that "overboard discretion" existed in the approval process, since the code's criteria included such vague requirements as finding that the use is "in harmony" with the zoning plan, and did not "substantially impair" the master plan. (As Robert Manley's article in Appendix L points out, writing such gook is asking for trouble).

Our model criteria are strictly locational. Any community adopting such regulations should have them undergo careful legal scrutiny, and adopt them on the basis of need in view of clear evidence of impacts, after such evidence has been collected and studied.

Sections 1000.34

The local unit of government must determine the districts wherein these uses are to be conditionally permitted.

Sections 1000.40 - 1000.43 (Manufactured Home Parks)

General

State legislation effective in 1987 revised Chapter 3733 of the Ohio Revised Code. Previous Code definitions of "trailer" and "trailer park" were replaced by those of "manufactured home" and "manufactured home park." At the time of publication of our Model, the Ohio Public Health Council had not yet revised Chapter 3701 of the Ohio Administrative Code to reflect these changes.

Two important points must be noted here. First, OAC Chapter 3701 rules apply to manufactured home parks and not to single units located elsewhere. Secondly, Chapter 3701 rules prescribe minimum regulations for such parks, so localities may therefore develop their own regulations which may go beyond these minimum requirements, so long as they are reasonable. The City of Columbus, for example, has prepared regulations which set minimum and maximum acreage limits for parks, establish density limits of 6 units per acre, require 8 percent of the site to be devoted to open space and/or recreation, contain street lighting and underground utilities provisions, and require a 25-foot perimeter yard setback. Such requirements should be deemed reasonable in a metropolitan area if similar requirements are imposed upon other types of developments. Conversely, imposing such standards on manufactured home parks in a rural setting may be unreasonable if few such requirements pertain to other types of housing developments.

Section 1000.41

The ORC definition used in this section for "manufactured home" was essentially taken from the definition of that term contained in the U.S. Department of Housing and Community Development's National Manufactured Home Construction and Safety Standards Act of 1976 (42 U.S.C. Sec. 5401). We urge that this definition be modified in the ORC to include the words "bearing a label certifying that it is built in compliance with Federal Manufactured Housing Construction and Safety Standards," so that trailers built prior to this act, as well as units which do not meet HUD standards, are clearly excluded from consideration as "manufactured homes." We strongly recommend reading Welford Sanders' Regulating Manufactured Housing (Chicago: APA Report 398, 1986) for clarification on manufactured housing issues. Also please note the distinctions made under the Model's definition of "Factory-Built Housing."

Section 1000.44

Further guidance and information concerning OAC Chapter 3701 and State regulation of manufactured home parks may be obtained by contacting the Bureau of Environmental Health, Ohio Department of Health, 246 North High Street, Columbus, Ohio 43216.

Sections 1000.70 - 1000.75 (Home Occupations)

The need for second family income, the expansion of mail-order and other newer businesses, the proliferation of in-home professional offices, and the coming-to-age of the computer have broadened the range of the cottage industry. Our sample regulations attempt to distinguish between home pursuits which likely go unnoticed and those which may cause problems if not regulated in some manner. This is an area where common sense should prevail.

Section 1000.72

The exception of Type B family day-care homes complies with ORC Section 5104.054, which stipulates that "No municipal, county, or township zoning regulations shall require a conditional use permit or any other special exception certification for any such Type B family day-care home." (See our Model definition of family day-care facility.)

Sections 1000.80 - 1000.86 (Group Residential Facilities)

General

The Advisory Committee for the Model Zoning Code considered no less than eight definitions for this subject, and obtaining full agreement on one definition is a Herculean task. Part of the controversy and confusion results from the present status of Ohio law and regulatory provisions, which variously define "residential facility," "adult foster care family home," "residential care facility," "adult independent living arrangement," "residential housing facility," "continuing care facility," and "home for the aging," not to mention nursing homes and rest homes. Various residency limits also abound; at least six but not more than eight; not more than five persons; at least nine but not more than sixteen; six or more; three to five; six to sixteen. The State of Ohio sorely needs a good legislative overhaul in this area, along the lines proposed in House Bill No. 776 currently being considered by the Legislature. In the interim, we hope the sample regulations offered in the Model will allow localities to deal with such facilities properly.

Section 1000.82

It is important to note that the extension of the term "group residential facility" does not include nursing homes, homes for the aged, rest homes, county homes, or sheltered housing for older adults. Two classes of such facilities are established here, primarily based upon the perceived impacts upon a neighborhood by such facilities respectively. The Classes are further distinguished by size (Type A and B) in view of their relative impacts, particularly with respect to single-family neighborhoods.

Section 1000.83

The Class I Type B facility is permitted by right in any residential district. Smaller facilities of this kind are more frequently being found by courts to be the functional equivalent of families (our Model definition of family accommodates this view). The American Planning Association agrees:

> APA's review of current zoning practices and examination of current research leads us to conclude that community residential facilities for developmentally disabled people ought to be treated as a form of conventional housing under zoning. Small group homes having similar characteristics (in terms of intensity of use and off-site impacts) to traditional single-family residences ought to be treated in the same manner...under zoning and allowed by right in single-family zoning districts.

The criteria cited here are illustrative in nature and were essentially gleaned from two sources: Jaffe and Smith's Siting Group Homes for Developmentally Disabled Persons, and the U.S. Government Accounting Office's An Analysis of Zoning & Other Problems Affecting the Establishment of Group Homes for the Mentally Disabled (Washington: GAO, 1983). It is interesting to note that the majority of locational characteristics which are stressed by the GAO are intended not for the protection of the neighborhood but for the protection and benefit of the residents -- a safe and stable neighborhood; a high percentage of single-family residences; proximity to public transportation, support services, recreation, shopping, and other amenities.

Perhaps the most debatable criterion is number 5, the distancing requirement. The purpose of this requirement is to assure that the residents of a facility do experience limited interaction with typical neighborhood residents, and that they do not become part of a ghetto of facilities gerrymandered into the same city block.

Criterion number 9 aims at making larger facilities more palatable by establishing a formal communications channel between a facility and its neighbors.

Sections 1000.90 - 1000.94 (Factory-Built Housing)

General

In contrast to Sections 1000.40 to 1000.44 which regulate the location of manufactured housing in the Manufactured Home Park District (R-MH), these requirements regulate factory-built housing in all other districts.

A key phrase in our definition of manufactured home is "and which bears a label certifying that it is built in compliance with the Federal Manufactured Housing Construction and Safety Standards." This HUD federal code is a preemptive code which overrides local code requirements which may affect such constructed units, with respect to their inherent construction and safety. In U.S. District Court Case No. C2--85-1814 in 1987, the State of Ohio and City of Columbus signed a Consent Decree stipulating the following:

1. City defendants affirm that Section 5403(d) of the Act and Section 3282.11 of the Regulations clearly establish the supremacy of the Federal Manufactured Home Construction and Safety Standards set forth in the Regulations.

2. City defendants shall not enforce or attempt to enforce any standard regarding construction or safety of the City Building Codes that applies to the same aspect of performance as any provision of the Act and the Regulations promulgated thereto.

3. City defendants shall not interfere with the construction and placement of, or refuse to issue a building permit or occupancy permit for, any manufactured home that has been certified pursuant to Section 3282.205 of the Regulations, excepting and reserving any standard not covered by the Act or the Regulations promulgated thereto.

4. City defendants have no authority, and shall not attempt to exercise any authority, to inspect any manufactured home, which has been certified pursuant to Section 3282.205 of the Regulations, for compliance with any construction or safety standards or requirements established by the Act....

5. State defendants affirm that Section 5403(d) of the Act and Section 3282.11 of the Regulations clearly establish the supremacy of the Federal Manufactured Home Construction and Safety Standards set forth in the Regulations.

6. State defendants affirm that the Act and the Regulations remove any manufactured home that has been certified pursuant to Section 3282.205 of the Regulations from regulation under the Ohio building code.

7. Pursuant to the Act and the Regulations, State defendants agree that they shall not impose or enforce the Ohio building code upon any manufactured home that has been certified pursuant to Section 3282.205 of the Regulations.

8. State defendants further agree that they shall not take any action to regulate or prevent the construction of any manufactured home that has been certified pursuant to Section 3282.205 of the Regulations.

9. State defendants affirm that because of the Act, the Regulations, and the Ohio building code, the Ohio Board of Building Standards has no authority to certify a building department of any political subdivision of Ohio to regulate under the Ohio building code any manufactured home that has been certified pursuant to Section 3282.205 of the Regulations.

10. State defendants affirm that because of the Act, the Regulations, and the Ohio building code, the delegation of authority under Sections 715.26, 3781.01 and 3781.06 of the Ohio Revised Code to political subdivisions of Ohio, or agents thereof, to regulate single-family, two-family and three-family dwelling houses does not include a delegation of authority to regulate the construction of any manufactured home that has been certified pursuant to Section 3282.205 of the Regulations.

Essentially, the consent decree, signed to settle a suit brought by the Ohio Manufactured Housing Association, means that HUD-certified units may not be subjected to State or local code requirements respecting their basic construction or safety as governed by the HUD code.

However, it is important to note that the decree approved by Judge Holschuh included the following "Good Faith Provision":

> Any reasonable standard regarding construction or safety of the City Building Codes that does not apply to the same aspect of performance as any provision of the Act and the regulations promulgated thereto may be enforced by City defendants so long as said enforcement is performed in good faith.

Again we see the word reasonable used as a guide! In this case we may assume that special circumstances (development on land with unusual topography or unique drainage problems, or on property within an historical district) may reasonably warrant the addition of local requirements for construction or safety.

Section 1000.93

The siting requirements given here are illustrative and deal not with the construction of the unit but with its siting.

Section 1000.94

No distinction for zoning purposes is made between manufactured homes (with HUD certificates), modular homes, or site-built homes. Instead, any such unit is permitted in a given district if it meets the design and appearance standards for that district.

Section 1000.95 (Design and Appearance Standards)

The zoning implications of the concent decree signed by the City of Columbus and the State of Ohio are far-reaching. It may not be an oversimplification to say that Ohio communities have been given notice that factory-built housing, in particular, both HUD-approved manufactured homes and similar modular units, should be permitted by right in residential districts where "similar" site-built units are/have been permitted.

But communities need not view this development with alarm. Many factory-built units being produced today exceed BOCA requirements. In fact, comparatively attractive and expensive factory-built units are supplanting site-built units in many posh resort communities in the West and Southwest. The days of the sardine can are behind us.

How, then, may Ohio communities deal with the issue of assimilating factory-built units into existing neighborhoods and proposed subdivisions? Welford Sanders sees a trend nationally for zoning ordinances to deal with this problem through design and appearance standards:

> In many cases, they [communities] have adopted standards that address the aesthetic and compatibility concerns that have led some localities to reject manufactured housing. When certain appearance or design criteria are met, these communities permit manufactured housing in the same districts as site-built units. A few have established a single set of appearance requirements for all types of single-family housing, whether it is built on site or in a factory.

The latter approach is recommended as a way to avoid two traps. First, writing a single set of design and appearance criteria to apply to all kinds of units prevents the community from writing exclusionary standards, standards slanted in such a way that they "write out" anything that isn't site-built. Secondly, including site-built homes should force the standards in the direction of reasonableness (i.e., we can look around the community to see if a given provision "fits" or not).

What kind of standards are we talking about here? Sanders' investigation revealed some common threads running through the ordinances he examined:

1. Roof Pitch: pitch requirements entailing a one or two inch vertical rise for each twelve inches of horizontal run.

2. Roof Overhang: minimum overhang of from six to twelve inches, except where approved decks or certain accessory structures are attached or semi-attached.

3. Roof Material: wood shingle, wood shake, synthetic or composite shingle, ceramic tile, concrete tile, asphalt or fiberglass shingle (no corrugated metal or fiberglass).

4. Exterior Siding: one or a combination of materials such as brick, stone, stucco, clapboard or clapboard-simulated vinyl or metal, wood shingles, shakes or similar material (no smooth, ribbed, or corrugated metal, fiberglass, or plastic); siding must extend to the ground level, or to the top of the foundation when a solid concrete or masonry perimeter foundation is used.

5. Structure Size: minimum width/length or floor area requirements (examples: RI District, 20 feet by 60 feet; R8 District, 880 square feet).

6. Other: requirements for garages, etc.

Concerns about the legality of such requirements have been raised in light of the Connecticut Supreme Court's 1988 decision in Builders Service Corp. v. Planning & Zoning Commission (208 Conn. 267). In essence, a person owning a $40,000 3.57-acre lot wanted to put a modular unit valued at $41,000 on the lot. His request was rejected, because the unit would have 1,026 square-feet, but the area zoning minimum required a 1,300 square-feet unit on the site. The court ruled that the minimum floor space requirement was not rationally related to the promotion of public health, safety, or welfare. The court

added that no evidence was presented that the unit would be undersized as proposed, or that it would be aesthetically incompatible with the neighborhood.

However, we need to look closely at this case. First, it is unusual -- a $40,000 unit on a $41,000 lot. Second, the court also held that the regulations in question were not ultra vires, since the enabling legislation did permit zoning commissions to regulate the size of buildings. Third, dissenting court members argued that there is a direct relationship between the appearance of a neighborhood and its property values, and a small house on a large lot in a neighborhood of large houses on such lots might impact their value. It may be, then, that a poor job was done of defending the regulations, or that they were not framed in a reasonable manner to begin with.

Aesthetic considerations, property value considerations, and compatibility of use considerations have been found to be valid bases for zoning provisions in historical districts and unique neighborhoods, like the German Village area in Columbus, if they are reasonable. Such considerations should also apply to preserving the character and integrity of residential districts, if they are reasonable.

While we can not begin to offer model criteria for such regulations, we can offer a challenge to both the housing industry and Ohio local governments: work together (perhaps with the aid of the planning community) to help Ohio make the best of this opportunity. Perhaps a statewide symposium on this subject would be a good start.

ARTICLE 11 (PARKING)

Section 1131

The handicapped parking requirement is based upon Section 512.4 of The Ohio Basic Building Code. Localities not administering their own building codes should consider these provisions for their zoning codes. Localities should also consider requiring a 12' width for all handicapped spaces to accommodate wheelchairs.

Section 1132

Charles Reed's article in Appendix L, "Your Zoning Provisions for Housing the Elderly May Be Out of Date," provides several parking-related concepts, upon which this sample is modeled. So long as the set-aside provision is properly in place, a ratio of 2 spaces for every 4 units may work as well, particularly for elderly housing for lower-income persons. The larger parking space dimensions are a desirable option.

ARTICLE 12 (SIGNS)

General

The provisions of Article 12 regulating signs provide a framework for local authorities to establish requirements to meet the conditions in their own communities. These regulations should not be adopted verbatim. Careful consideration should be given to the meaning of each section and to its adaptability to the local situation. In most cases it will be desirable to modify various sections or add new ones.

The first step for any community wanting to include sign control regulations within its ordinance (resolution) is to conduct an inventory of existing signs. Such a survey will pinpoint most of the conditions which should be taken into consideration in developing sign regulations and show the way to other steps necessary for improving the quality in signs. It also will provide a basic tool for determining conformance or nonconformance after the regulations are adopted. This inventory should distinguish between on-premises and off-premises signs.

Many modifications could be made in the provisions to adapt them to unique situations. For example, special regulations may be developed for busy downtown areas or for other exceptional urban conditions. Agricultural areas, historic districts, and other special zones or areas may require special treatment. It may be desirable to prohibit signs in some areas altogether.

Many of the items in Article 12 could more properly be regulated through a county or municipal building code, especially Section 1202. These items are included in this model zoning code because not all of the municipalities and counties and none of the townships using this model have adopted building codes to regulate these matters. We therefore feel that these items are better regulated through a zoning code than left unregulated.

Some communities will find it desirable to include licensing provisions for the erection and maintenance of signs by outdoor advertising companies, along with a fee schedule for this. Bonding and liability insurance also might be among the considerations expressed in such provisions. Considerable detail on construction, weight, and electrical work may be useful; this may be required on the application for a permit. Sometimes communities may want to include maintenance requirements in their regulations to help keep signs in good repair for the sake of both safety and appearance. An annual inspection fee may be charged for this.

The location and placement of signs are regulated in most sign regulations as are construction, lighting, and other engineering considerations. The size of a sign should also be subject to control. Such control is usually related to visibility and setbacks. The content of the sign may be controlled to some extent, for example, in residential or historical districts. Sign graphics are primarily a design problem. Solutions to such problems and their subsequent application throughout the community will require considerable cooperation among interested parties and a continuing educational program to show what can be accomplished.

Enforcement of sign regulations is primarily a matter of local public sentiment and the diligence of the zoning administrator. It also is a matter for the courts, since the sign regulations may be subjected to the judicial test of reasonableness. If the regulations are arbitrary, capricious, discriminatory, or unreasonable, a court will most likely declare them invalid. Recent court cases seem to indicate that future court tests of particular sign regulations will be decided on whether or not the objectives, aimed at achieving an attractive, efficiently functioning, and prosperous community, are reasonable over-all, including the consideration of aesthetic objectives.

Section 1213

Article 12 makes considerable distinction between signs which are on-premises, that is, signs relative to a business or service being conducted on the premises, and signs which are of an off-premises character which advertise a product or service. Off-premises signs are generally of two types: poster panels which are 12 feet by 25 feet (300 square feet) and painted bulletins which may range from 600 to 1600 or more square feet. Subsection (2) of this section allows single billboards (or painted bulletins) of up to 1,200 square feet, but limits sign area to 600 square feet (or two poster panels) if more than one sign is used. The rationale for this is to reduce clutter through encouraging larger, but fewer, signs, and the recognition by the sign industry that four poster panels (or a total of 1,200 square feet) in one location is too much to comprehend in one quick glance from the roadway. Reducing the 1,200 square feet figure to 900 square feet does not seem unreasonable.

Section 1250

There are two important limitations to local government sign regulation. 1) Counties and townships are limited by Ohio Revised Code Section 303.20 and 519.20 which state that "outdoor advertising shall be classified as a business use and be permitted in all districts zoned for industry, business, trade, or lands used for agricultural purposes." Because these sections apply only to counties and townships, municipalities will probably want to delete the first sentence of Section 1250. 2) Revised Code Chapter 5516 authorizes the Director of the Ohio Department of Transportation to issue regulations for signs within 660 feet (one-eight mile) of highways on the Interstate and Federal-aid Primary Systems. For interstates, non-accessory signs are permitted within 660 feet of the highway only in zoned commercial or industrial areas inside municipal boundaries as the boundaries existed on September 21, 1959. There are also some restrictions on accessory signs. Non-accessory signs are permitted within 660 feet of primary highways in zoned or unzoned commercial and industrial areas. Regulations adopted by local governments which are consistent with the intent of Chapter 5516 will be accepted in lieu of the state controls, although municipalities may adopt regulations which are more restrictive than Chapter 5516 and the regulations adopted pursuant thereto.

ARTICLE 13 (ADMINISTRATION)

General

One of the major problems with zoning in Ohio is with its administration. For this reason, more attention has been given to administration in this model than is normally the case in most model zoning ordinances (resolutions). Experience has shown that in many smaller municipalities and rural areas, members of the zoning or planning commission, board of zoning appeals, and the legislative authority are often not clear on their responsibility with regard to the administration of their zoning ordinance (resolution). Hopefully this article will clarify some of the problems that have arisen and protect the administrative official or agency from acting where they have no authority to act. Remember the golden rule cited by Harry Welsh in his article, "Legal Pitfalls of Zoning": Do it right the first time, and do it on time.

Section 1310

The zoning administrator is the keystone in the administrative process. As the chief enforcement and administrative official, he is the person the public directly identifies with zoning. Mike Kurilla's article in Appendix L describes the multiple duties and challenges of this tough job. A community should take great care to hire an experienced, competent person, and should treat that person like a valuable asset -- pay him well, and see that he can take advantage of training and educational opportunities to improve his skills and keep up to date.

Section 1311

It is critically important that the administrator does not deviate from strict adherence to the code and to the established procedures. To "alter" a procedure, to "overlook" one requirement probably means to violate the law. He must doublecheck every move and document everything, since even the most routine issue may end up in court.

Section 1320

The commission only has authority to make recommendations to the legislative authority in the areas of amendments and planned unit developments. However, prior to the original adoption of zoning, the commission is the agency with the responsibility to formulate the ordinance (resolution) and the zoning map. It must be stressed that the commission has only advisory powers.

Sections 1330 - 1332

The powers of the board of zoning appeals are very similar to those of the courts. Under the Ohio Revised Code, the board of zoning appeals is given three basic powers:

1. To hear and decide appeals;
2. To grant variances;
3. To grant conditional zoning permits.

For municipal corporations, as stated in Section 713.11, Revised Code, the powers of the board of zoning appeals do not specifically include conditional uses; however, they should be administered by this agency. This section also allows the commission members to be the board of zoning appeals. If at all possible, however, the board should be composed of different individuals. If the commission does also function as the board, however, separate records must be maintained.

Section 1351

The fees should be set by a separate ordinance (resolution) so a zoning amendment is not needed to change them. See Appendix D for a sample.

ARTICLE 14 (ENFORCEMENT)

Section 1401

No building or structure may be erected, moved or altered without a zoning permit issued by the zoning administrator, and may only be issued when in conformance with all provisions of the ordinance (resolution). Too often the zoning administrator grants minor variances for yard regulations or other minor acts which are clearly outside his area of responsibility. All variances must be granted, even if of a minor nature, by the board of zoning appeals. Zoning permits must also be issued for approved appeals, variances, and conditional uses. In these instances, the zoning administrator may not issue such a permit until ordered to do so by the board of zoning appeals.

Zoning permits and the certificates of occupancy are really two parts of the zoning inspection and enforcement process. Ideally, they should be a two-part form. The zoning permit section is issued when construction begins; the remainder of the form should be completed when the work is finished and the zoning administrator is satisfied that all regulations of the zoning ordinance (resolution) have been complied with.

Section 1402

The items listed cover only general information that should be submitted with the application for a zoning permit. The term building permit is sometimes used instead of zoning permit. Zoning permits are frequently mixed up with the permit required under the building code or for assessment purposes. It is, however, highly recommended that an integration of zoning and building inspection be accomplished if at all possible. A sample Application for Zoning Permit is contained in Appendix E.

Section 1404

Referral of certain zoning permit applications to the Director of the Ohio Department of Transportation is often overlooked in zoning administration. This referral may save the taxpayer considerable amounts of money by halting building in areas that may in the near future have to be purchased for highway right-of-way. It must be pointed out, however, that the zoning administrator may only refuse to issue the zoning permit if the Director has already initiated proceedings to acquire the land within 120 days. The term "initiate proceedings to acquire the land", as used in Section 5511.01 of the Ohio Revised Code, should be interpreted to mean that the Director has already filed an eminent domain action to appropriate the land. It should not be interpreted as being satisfactory if the Director has merely entered into certain negotiations with the property owner. The case of State, ex. rel. Dille Laboratories Corp. vs. Woditsch, 106 Ohio App. 541 (1958), makes it quite clear that" a public authority cannot restrain an individual from using his land in a lawful manner simply because it intends at some future date to acquire the land for a public purpose. The public authority must either proceed immediately to acquire the land or else permit the owner to improve it in any lawful manner which he desires."

Section 1405

The intent of this section is to assure that construction will not linger on over a long period of time, but will be carried on diligently until completion. If the time limits specified in this section are not met, the zoning permit may be revoked using Form No. 3. The permit may, however, be renewed upon re-application.

Section 1410

A certificate of occupancy for zoning purposes must be issued before any use may be occupied or utilized. The zoning administrator must inspect the premises to determine if the work has been completed in conformance with the approved zoning permit and the ordinance (resolution). This should not be confused with a certificate of occupancy issued under the building code, although it is recommended that these two functions might effectively be combined. A sample Application For Certificate of Occupancy is contained in Appendix E.

APPENDICES A,B, AND C

These Revised Code chapters are provided for the user's convenience.

APPENDIX D

The items listed in Section (a) and the accompanying fees are merely illustrations. A community may wish to compare fees with other communities to assure that its own are in the ballpark.

APPENDIX E

These sample forms are for the user's convenience. Comparing forms (and procedures for filing, recordkeeping) with other communities can be helpful.

APPENDICES F AND G

These samples come from a charter municipality. Clear, precise rules governing procedures keep the organization on track and let everyone know what is expected. Notice should be taken of the planning commission's specific efforts to comply with Ohio's Sunshine Law in parts D and F of Section II.

APPENDIX H

One may convincingly argue that drug paraphernalia regulations are the province of the local criminal code, not the zoning code. However, many smaller communities asked for sample regulations, and many Ohio cities' zoning codes contain such provisions.

APPENDIX J

The Sample PUD Regulations provided here address developments with a mixture of residential and commercial/industrial uses. Communities may wish to consider added provisions for exclusively residential PUDs, perhaps with a minimum size of ten acres. Such regulations might lower open space requirements to fifteen percent of the development, or even to ten percent if a specific portion of the units are for elderly households.

APPENDIX N

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